The Incorporated Accountants' Journal.

THE OFFICIAL ORGAN OF

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Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.

Contents.

Professional Notes.

THE 41st Annual General Meeting of the Society of Incorporated Accountants and Auditors will be held at Cordwainers Hall, London, E.C., on Wednesday, May 12th. The 45th Annual Meeting of the Institute of Chartered Accountants will be held in the Hall of the Institute, Moorgate Place, London, E.C., on Wednesday, May 5th.

The Annual General Meeting of the London Chamber of Commerce was held on April 28th, when Sir James Martin, F.S.A.A., was unanimously re-elected President of the Chamber for the ensuing year, and Mr. Thomas Keens, Incorporated Accountant, and Mr. Daniel S. Fripp, Chartered Accountant, were unanimously re-elected Honorary Auditors. At the 66th Annual Meeting of the Association of British Chambers of Commerce, held on April 22nd and 23rd, Mr. Gilbert C. Vyle, of Birmingham, was elected President for the year 1926/27, and Sir James Martin was appointed Deputy President, the Honorary Auditors appointed being Mr. C. Hewetson Nelson, Incorporated Accountant, Liverpool, and Mr. H. Lakin-Smith, Chartered Accountant, Birmingham.

In his Presidential Address at the Annual Meeting of the Association of British Chambers of Commerce, Mr. Stanley Machin suggested for the consideration of the Chancellor of the Exchequer that he should call to his aid in consultation experienced members of the accountancy profession with the view of placing Government accounts upon better lines. The origination of scientific accounts should rest, in his opinion, not with the Civil Service, to whose integrity and devotion to duty he paid a high tribute, but with the members of the accountancy profession, who were in a position to advise on such matters.

There is no desire on the part of commercial men to lend themselves to attacks upon the Civil Service, and Mr. Machin made this quite clear. The Civil Service is bound by statutes and the regulations made thereunder, and the weakness of the national accounts as presented to Parliament by the Chancellor of the Exchequer is that they are upon a cash basis. Revenue from taxes and capital receipts are lumped together on one side, and productive and unproductive expenditure appears on the other. Until some drastic reform is carried out commercial men, whose appreciation of scientific accounting grows each year, will continue to be restive.

We publish this month the principal parts of Mr. Churchill's Budget speech in so far as it relates to new taxation and changes in procedure. The portion which will be of most interest to the profession will probably be that which relates to the contemplated change in the method of assessment by the dropping of the three years average. This, however, will not affect the year 1926-27, but will come into operation for the year 1927-28, and, according to Mr. Churchill's statement, will follow very closely the recommendations of the Royal Commission on Income Tax. The details of the method of assessment are not yet available, but assessments under Schedule D will be made on the profits of the preceding year instead of on an average. Provision will be made for relief in hard cases during the transition period, and a right will be granted to carry forward losses for six years. Fuller particulars will be awaited with

interest. Another alteration in the law which was quite anticipated is an amendment to correct the flaw which was revealed by the recent judgment in the case of *Whelan* v. *Henning* in relation to assessments under Case V of Schedule D where there was no income in the year of assessment.

In regard to the Chancellor of the Exchequer's proposal to abandon the three years average in favour of assessment on the profits of the preceding year, it is of interest to note that at the meeting of the Association of Chambers of Commerce, Sir Stephen Demetriadi, on behalf of the London Chamber, moved a resolution to the effect that as at the present time neither the Revenue nor the taxpayers generally would be prejudiced by the abandonment of the three years average on business profits the Chancellor of the Exchequer be recommended to substitute a year to year system based upon the profits of the preceding year. This was strongly opposed by the Bradford Chamber of Commerce, and on a division was defeated by a large majority. It is clear, therefore, that the Chancellor of the Exchequer's proposal will not meet with anything like general acceptance from the trading community, although it will obtain the support of the London Chamber.

The provisions as to new taxation are largely what have been anticipated for some time in the public Press, the chief point of interest being the application of the prospective surplus which such taxation will provide. This surplus is estimated at about £14,000,000, of which £10,000,000 is to be applied to Sinking Fund purposes in order to fill up the gap occasioned by the deficit in the past year and thereby maintain the operation of the fund on the basis of £50,000,000 per annum for the reduction of debt. One object of this is obviously to create favourable conditions for the debt conversion operations which are due to take place in the near future.

On April 20th an important deputation from the Corporation of the City of London, the London Chamber of Commerce, and the London Municipal Society waited upon the Home Secretary to point out to him the gradual dis-franchisement of the great centres of commerce in regard to the municipal vote owing to the ever increasing number of business houses which are incorporated under the Companies Acts and thereby lose the right to a vote. Sir James Martin, in addressing the Home Secretary, estimated that more than 50 per cent. of the ratepayers and occupiers of the City of London had lost the municipal franchise, and he pointed out that the leading banks which had thousands of branches throughout the country were not entitled to a single vote from the premises they occupied in any town. Sir James further expressed the opinion that excessive rating was a greater burden on business enterprise than imperial taxation. The Home Secretary, in reply to the deputation, expressed his sympathy with the views put forward, and promised to consult his colleagues in the Cabinet.

In another column will be found particulars of the arrangement which has been arrived at with the Irish Free State for avoiding the assessment of income tax twice over, and the subsequent recovery of part of the tax by way of repayment. The arrangement, briefly stated, is that each country will tax only its own residents, and will exempt from taxation the income of persons resident in the other country in respect of income arising within its borders. Persons legally resident in both countries will be chargeable by both, but will be given a measure of relief by both. A company is deemed to be resident in that country only in which its business is managed and controlled.

An important judgment has been given by the Court of Appeal (consisting of the Master of the Rolls and Lords Justices Scrutton and Sargant) which alters the basis on which the profits of a new company have hitherto been assessed in the earlier years of its existence. The enactment which governs these assessments is contained in Rule 1 of Cases I and II, Schedule D, which provides that where a trade, &c., has been set up within three years "the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of same and where it has been set up and commenced within the year of assessment the computation shall be made according to rules applicable to Case VI."

In the case which came before the Court, namely, *Betts* (*Inspector of Taxes*) v. *Clare & Heyworth and Clare & Heyworth, Limited*, the firm of Clare & Heyworth set up a new business on March 1st, 1919, and subsequently sold it to the company as from January 1st, 1920, the agreement for sale being entered into on March 1st, 1920. The members of the firm were the sole shareholders in the company. The first account was made up for the ten months ended December 31st, 1919, and the next account was made up for the three months to March 31st, 1920, the intention being for the future to balance on March 31st each year. There was no dispute with regard to the assessment for the year 1918-19, which was based on a proportionate part of the profits of £1,000 made during the first ten months. As regards the year 1919-20 the firm and the company claimed that the assessment should be

based on the same period, that the amount should be £1,200, being 12/10ths of £1,000, and that this assessment should be apportioned between the firm and the company.

The contention of the Crown was that the assessment for 1919-20 should be £12,138 being 12/13ths of the profits arrived at by combining the accounts for the two periods ended March 31st, 1920 (a large profit having been made in the last three months). The Income Tax Commissioners and Mr. Justice Rowlatt both decided in the favour of the company, but the Court of Appeal, by a majority, have reversed this decision and given judgment in favour of the Crown. The dissenting Judge was Lord Justice Scrutton. The Master of the Rolls laid great stress on the word "average" which appears in the Rule above quoted. This word, in his view, appeared to indicate a period longer than that for which the assessment was to be made. The words "profits or gains for one year" were, his Lordship thought, substituted as a synonym for "annual profits or gains." He considered that the case of *Burntisland Shipbuilding Company, Limited*, v. *Weldhen* was wrongly decided, and he could not follow it. The point, it will be observed, is that the period taken for averaging is more than "one year from the first setting up."

Liquidators of companies should take note of the decision of Mr. Justice Eve in the case of *Lang Propeller, Limited*, the effect of which is that income tax deducted from payments of mortgage interest, during periods when no profits were being made, cannot be the subject of a preferential claim by the Crown. In the case referred to the tax was deducted, but not paid over to the Inland Revenue, and the Court held that the amounts could not be treated as coming within sect. 209 of the Companies (Consolidation) Act, 1908, which gives priority of payment in certain cases, nor could they be held to be moneys in the hands of the company impressed with a fiduciary character and recoverable as such.

What is sufficient to constitute a fraudulent preference in bankruptcy has always been difficult to define. The requisite conditions were quoted in the King's Bench Division the other day in the case of *Re John Drage & Sons* as follows:—"First, that the payment was made by a person unable to pay his debts as they became due, from his own money; second, that it in fact preferred one creditor over others; and third, that the dominant motive with which that payment was made was a desire to prefer that creditor to whom the payment was made."

The difficulty is to ascertain the motive, and the Court added as a guide that if a voluntary payment is unexplained then a presumption of preference arises, but if there is any explanation the question to be decided is whether it indicates the desire or intention to give a preference. In the case under review the person to whom the payment was made required the money for the building of a house and when he asked for it he was ignorant of the company's financial position. In these circumstances the payment was treated as not being a fraudulent preference.

Sir Josiah Stamp, in speaking at the annual dinner of the Leicester Chamber of Commerce, discussed the problem of balancing a budget under a rapidly moving price level, and compared it to hitting a moving target in a cross wind. He said the two sides of the account contained elements which responded at very different rates to changes in the price level. With a depreciating exchange the taxpayer had a burden which was less when he came to pay it at the new value of money than had been intended, and the proper remedy was to provide a factor which would increase the charge by the change in the price level between the period when the tax was introduced and the time of actual payment. In other words, if the price level had increased 25 per cent. the amount of the tax should be increased by the same percentage.

Has a bank cashier any authority to give information to a customer in reply to inquiries as to the credit of a third person, and if so, has the bank any responsibility in respect of the information so given? This was the point raised in the Court of Appeal in the case of *Dunnicliffe* v. *Johnson and Others*. The claim was that the cashier had acted without reasonable care in recommending an investment to a customer of the bank, and that not only he, but also the bank was responsible for his action. In the original trial the jury found that the cashier had not exercised reasonable care, and judgment was entered against him but in favour of the bank. On the appeal it was endeavoured to make the bank also liable, but the Court came to the conclusion that there was no evidence that the cashier had any authority to make the statements he did on behalf of the bank and that the statements were accordingly made on his own behalf. The appeal therefore failed.

A mutual assurance association was formed amongst coalowners for the purpose of indemnifying its members against liability for fatal accidents to workmen, and members contributed towards claims in proportion to the wages paid in their works. The Inland Revenue claimed to disallow the contributions of the members in their accounts for the purpose of assessment to income tax, but the Court held (1) that the sums so paid were admissible deductions in

computing for income tax the profits made by members, as the money was expended on a true insurance principle, and (2) that the association did not carry on a trade the profits of which were liable to corporation profits tax, as it merely provided machinery for enabling the members to insure themselves. The case was *Thomas* v. *Richard Evans & Co., Limited*, and the association was *South-West Lancashire Coalowners Association, Limited*.

The report of the National Insurance Audit Department on work done during the year 1925 shows that 9,304 certified accounts of Approved Societies and Branches were issued, comprising payments amounting to £19,741,810. Of these accounts 5,718 were certified without reservation, and 3,586 subject to reservation. The most frequent ground of reservation appears to have been over-payment of benefits under various heads including:—(*a*) benefits not reduced appropriately in respect of arrears; (*b*) benefits paid before members had qualified therefor by paying the appropriate number of contributions; (*c*) benefits paid to members who had gone out of insurance; and (*d*) benefits paid to members over seventy years of age. The standard of book-keeping seems to have improved somewhat during the last three years, the percentage of accounts certified without reservation having increased from 52 per cent. to 61 per cent., but with 39 per cent. remaining defective there is still much room for improvement.

Fraud and failure to account were the subjects of 64 special reports, and in these cases more than one-half in number and two-thirds in amount involved falsification of accounts, including the alteration of medical certificates, the alteration and fabrication of receipts for benefit, and the concoction of fictitious maternity benefit charges.

The provisions of sect. 22 (4) of the Trustee Act, 1925, in relation to the audit of trust accounts have given rise to a good deal of uneasiness, as it is not certain whether this section enables trustees to have their accounts audited more than once in three years except in special cases. What is a special case must always be a matter of opinion which may be open to challenge. It is also necessary to compare the provisions of the new Act with those of the earlier enactments, as, for example, sect. 13 of the Public Trustee Act, 1906. The position is so doubtful, however, that, in the absence of some amendment to the new Act, trustees will remain in great uncertainty until a decision of the Court has been obtained on some concrete case.

Conditional Revocation of a Will.

SECT. 20 of the Wills Act, 1837, enacts that "no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid (*e.g.*, marriage), or by another will or codicil executed in manner hereinbefore required (*i.e.*, signed by the testator in the presence of two witnesses), or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same." Revocation is in all cases a question of intention, and if the act done, though in itself sufficient to revoke a testamentary instrument, can be shown to have been done for a purpose other than revocation it will not revoke the instrument. The principle governing destruction is that the mere destruction of a document is an equivocal act, and has no effect unless the destruction is effected with an intention to revoke it.

The destruction of a will on the erroneous supposition that it is invalid, or become useless, or that another instrument is valid, will not revoke the will. The destruction of a will—destroyed not with a view of revocation but because the testator thought it had been revoked—does not revoke the will; neither does the destruction of a codicil revoke the will if it appears that the codicil was destroyed on the supposition that the will would still stand (*James* v. *Shrimpton* (1876) 1 P.D., 431). An act of destruction done merely for the purpose of making a fair copy of the will or to improve the handwriting has no revocatory effect. A revocation founded on an assumption of fact which is false takes effect unless, as a matter of construction, the truth of the fact is the condition of the revocation, or, in other words, unless the revocation is contingent upon the fact being true (*Thomas* v. *Howell* (1874) L.R., 18 Eq., 198). This doctrine was adopted in *re Faris* (1911) 1 I.R., 469), and by the Court of Appeal in the recent case of *re Southerden* (1925) P., 182). In this case the testator, under the mistaken belief that in the event of his dying intestate his widow would be entitled to the whole of his property, revoked a will which he had made by burning it. It was held that the revocation of the will, being dependent on a condition which was not fulfilled, was inoperative, and the contents of the will so destroyed were admitted to probate.

The Wills Act, 1837, only expresses the law as it stood before: that there may be a physical act of destruction, but that unless it is performed *animo*

revocandi it does not have the effect of revoking the document destroyed. To put a will into the fire simply is only destroying a piece of paper (*Clarkson* v. *Clarkson* (1862) 2 Sw. and Tr., 497). In *Perrott* v. *Perrott* (1811) 14 East, p. 439) Lord Ellenborough said: "This, then, raises the question whether such a mistake, clearly evidenced by what passed at the time of cancellation, annuls the cancellation, and entitles us to act as if the *animus cancellandi* or *revocandi* were altogether wanting, and we are of opinion that it does. The testatrix mistook either the contents of her will, which would be a mistake in fact, or its legal operation, which would be a mistake in law; and in either case we think the mistake annulled the cancellation."

The case of *re Southerden* (*ante*) is of some importance in that it is the first time in which the Court of Appeal has been called upon to express an opinion on the question of conditional revocation. In this case, the incorrect assumption on which the testator destroyed his will was that his wife would take the whole of his property. If the destruction was contingent on the truth of that fact it would have no effect. The testator, when he destroyed his will in the presence of his wife, did so on the condition that she would have the whole of his property. The condition was not fulfilled, and therefore the revocation was not operative, and the original will stood.

Extraordinary and Special Resolutions.

EXTRAORDINARY and special resolutions are required by the Companies Acts, 1908 to 1917, for the purpose of obtaining the authority of the company *quâ* company to do certain acts; *i.e.*, the company must meet and act at a general meeting which has been properly authorised, properly convened, properly constituted, and properly held. To the professional accountant, the procedure relating to these two kinds of resolutions is important, since one or other is usually a condition precedent to the winding up of a company, and the authority of the accountant who is appointed liquidator must necessarily depend on the regularity of the passing of an extraordinary or special resolution. Having regard to the fact that fundamental changes, comprising, *inter alia*, the dissolution of a company, are usually brought about by these resolutions, it is not surprising that the Courts insist upon a meticulous compliance with the statutory requirements relating to them.

Two common mistakes in reference to these resolutions are often made. A special resolution is often called the confirmation of an extraordinary resolution because the former is defined, *inter alia*, as a resolution which has been *passed* in manner required for the passing of an extraordinary resolution, the material difference being that an extraordinary resolution requires a special form of notice which does not apply to a special resolution, viz, a notice specifying the intention to propose the resolution as an extraordinary resolution. A notice of an intended special resolution is not sufficient notice upon which to propose an extraordinary resolution, see *re Bridport Old Brewery Company* (1867) L.R., 2 Ch., 191).

The other common mistake is what is meant by a three-fourths majority. This is due to the fact that the word has two meanings:—

(1) The greater number or part; a number which is more than half the whole number, *e.g.*,

For the resolution ...	... 12 majority.
Against the resolution	... 3 minority.
	9 difference.

(2) The number by which, in voting, the votes cast on one side exceed those cast on the other, *e.g.*,

For the resolution ...	... 12
Against the resolution	... 9
	3 majority.

A majority of not less than three-fourths of such members entitled to vote as are present (sect. 69 of the Companies (Consolidation) Act, 1908) therefore means three-fourths or more of those present whether voting or not. If there are twelve persons present entitled to vote, nine or more must vote for the resolution, but if eight vote for the resolution and three against, and one does not vote, the resolution is not carried by a three-fourths majority, and the same rule applies if eight vote for the resolution and four do not vote at all.

Upon a show of hands only hands are counted, not proxies (*Ernest* v. *Loma Gold Mines* (1897) 1 Ch., 1), but on a poll the majority must be calculated with reference to the number of votes to which each member is entitled by the Articles. An extraordinary resolution in favour of reduction of capital was passed at a meeting at which twelve shareholders were present. Of these eight voted for the resolution, two against it, and two did not vote at all. It was held that the chairman's declaration that the resolution was carried did not legalise the proceedings, it being apparent on the face of them that the statutory requirements had not been complied with (*re John T. Clark & Co.* (1911) 48 Sc.L.R. 154).

Notice of a meeting to increase the share capital is not sufficient if it merely refers generally to a proposed extraordinary resolution to increase the

capital. It must show an intention to make the specific increase embodied in the resolution that is actually passed (*MacConnell* v. *Prill* (1916) 2 Ch., 57). In an unreported case (*Anglo-American Oil Company* v. *Martin*, C.A., 1914) a notice was held bad since it omitted to state that the resolution was to be proposed as an extraordinary resolution.

An invalid notice cannot as a rule be cured by acquiescence of members (*Pacific Coast Coal Mines* v. *Arbuthnot* (1917) A.C., 608), but where *all the members* are present and none object to the informality, want of notice will be excused and the proceedings cannot afterwards be invalidated on that ground (*Machell* v. *Nevinson* (1809) 11 East, 84).

In *re Express Engineering Works* (1920) 36 T.L.R., 275) one of the Articles provided that no director should vote in respect of any contract in which he might be interested. All the shareholders were directors, and at a board meeting they decided to enter into a contract in which they were interested. It was held that as every member of the company had assented to the contract it was not invalid, following *Salomon* v. *Salomon* (1896) 13 T.L.R., 46), where it was held that a company is bound in a matter *intra vires* by the unanimous agreement of its members.

An extraordinary resolution under sect. 182 of the Act of 1908 for the winding up of a company is not invalid by reason of non-compliance with sect. 69 as to notice, provided that all the shareholders are present at the meeting and assent to waiver of the requirement as to notice (*re Oxted Motor Company* (1921) 3 K.B., 82), following *re Express Engineering Works* (*ante*).

Amendments.—Any resolution passed at a meeting materially differing from the resolution of which notice has been given is invalid (*re Teede & Bishop* (1901) 70 L.J.Ch., 409), and apparently no amendment of the extraordinary resolution as stated in the notice can be accepted, since sect. 69 (1) provides that the notice should specify the intention of passing *the* resolution as an extraordinary resolution (*MacConnell* v. *Prill* (*ante*). A special resolution at the first meeting may be amended, but not at the second or confirmatory meeting.

The notice of the second meeting must state the intention to submit the resolution as passed at the first meeting for confirmation. A special resolution need not follow the exact terms of the notice given under sect. 69 (3) of the Act of 1908, but may be amended at the first meeting (*Torbock* v. *Westbury* (1902) 2 Ch., 871). Since the Act provides that it is necessary to give notice of the exact form of resolution to be proposed in regard to extraordinary or special resolutions, it is doubtful whether any substantial amendment can be effectively carried. It is usually impracticable to give adequate notice as required by the Articles for amendments of extraordinary or special resolutions, but in any event the amendment must be relevant and not outside the scope of the notice of the meeting, and must be reasonable.

Special Resolutions.—The requirements of a special resolution are:—

1.—Two meetings—at an interval of not less than fourteen days, *i.e.*, clear days, exclusive of day of notice and day of meeting, and not more than a calendar month—must be held. Apparently if the first meeting was held, say, on March 6th, the last day on which the confirmatory meeting could be held would be the same day as that on which the first meeting was held, but in the succeeding month, *i.e.*, April 6th; but if the first meeting was held, say, on January 31st, the confirmatory meeting could be held on the last day of the succeeding month, *i.e.*, February 28th. "The general rule of law in the computation of time is that fractions of a day are not reckoned. 'An interval of time not less than fourteen days' is equivalent to saying that fourteen days must intervene or elapse between the two dates" (Chitty (J.) in *re Railway Sleepers Supply Company* (1885) 29 Ch.D., 207). If the interval is less than fourteen clear days, the statutory defect in the resolution only affects the position of the company and its shareholders, *inter se*, and does not concern the creditors. Thus where a director of a company took shares in new capital raised under a resolution passed and confirmed at meetings the interval between which was thirteen days only, and the company afterwards went into liquidation, he was held to be precluded from objecting to the validity of the resolution as a ground for his removal from the list of contributories (*re Miller's Dale, &c., Company* (1886) 31 Ch.D., 211).

2.—When the first meeting has been adjourned to another date the confirmatory meeting must not be held within fourteen days of the adjourned meeting, *i.e.*, when the resolution was actually passed. At a meeting of a company held on August 25th, 1924, resolutions were duly passed as extraordinary resolutions by the requisite majorities. A further meeting was duly called for September 10th, 1924, for the purpose of confirming the resolutions as special resolutions. That meeting was adjourned until October 10th, 1924, when the resolutions were confirmed as special resolutions. It was held that the adjourned meeting on October 10th was only a continuation of the meeting of September 10th, and that the resolutions were duly confirmed as special resolutions at a general meeting held after an interval of not less than fourteen days nor more than a month from the date of the

first meeting (*Neuschild* v. *British Equatorial Oil Company* (1925) 1 Ch., 346).

3.—Meetings must be duly convened in accordance with the Articles, or, if none exist, Table A.

4.—The two meetings may be convened by the same notice if the Articles so provide (*re North of England Steamship Company* (1905) 2 Ch., 15). The notice must, however, convene both meetings unconditionally (*re Espuela Land, &c., Company* (1900) 48 W.R., 684) unless conditional notices are allowed by the Articles.

5.—It is not necessary that the notice of the first meeting should state that the resolution will be proposed as an extraordinary resolution, since sect. 69 merely says that a special resolution must be passed in manner required for the passing of an extraordinary resolution and confirmed by a bare majority (*re Penarth Pontoon Company* (1911) 56 S.J., 124). The notice should state that it will be a special resolution.

Voting.—The resolution at the first meeting must be passed by a three-fourths majority, either by show of hands or at a poll. At the second meeting it must be confirmed by at least a bare majority of those who are present and entitled to vote. A poll not having been demanded, the voting was held to be by show of hands (*in re Horbury Bridge Coal Company* (1879) 11 Ch.D., 109). Proxies are usually counted only at a poll (*Ernest* v. *Loma Gold Mines* (*ante*) unless the Articles expressly provide otherwise.

The resolution must be confirmed in the same form at the second meeting as passed at the first meeting. At either meeting a poll may be demanded by such number of members (not exceeding five) as the Articles fix, or in default of such provision by any three members. The declaration of the chairman that an extraordinary or special resolution has been carried on a show of hands (a poll not having been demanded) is, at any rate in the absence of fraud or obvious mistake, conclusive (and not merely *primâ facie*) of the fact that the resolution has been carried (*Arnot* v. *United African Lands* (1901) 1 Ch., 518). In *Wall* v. *Exchange Investment Corporation* (1925) L.J.N., 962) it was held that in the absence of fraud or misconduct the decision of the chairman of an extraordinary general meeting as to the validity of votes received and counted is final and conclusive, and cannot be reviewed where the Articles entrust the chairman with powers to decide whether any votes challenged are to be allowed or not.

The declaration of the chairman is not conclusive where there is no quorum, or if the declaration shows on the face of it that the statutory majority has not voted in favour of the resolution. A resolution at an extraordinary meeting called for the purpose of considering the removal of directors was declared by the chairman to have been carried unanimously, and no one challenged this ruling. It was held that an action could not be brought to restrain the new directors from acting on the resolution on the ground that it was not in fact carried by a three-fourths majority (*Oppert* v. *Brownhill Great Southern* (1898) 14 T.L.R., 249).

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to, and promotions in, the Membership of the Society have been completed since our March issue:—

ASSOCIATES TO FELLOWS.

Barnes, Fred Percy (Pix & Barnes), 24, Coleman Street, London, E.C.2, Practising Accountant.

Clarkson, Percival Donald Just (Percival Clarkson), 19, Winckley Square, Preston, Practising Accountant.

Evershed, Arthur Edward, 51, High Street, Guildford, Practising Accountant.

Handford, George Henry (Fred Hargreaves & Co.), 55, Cross Street, Manchester, Practising Accountant.

Percival, William Horace, A.C.A. (Ford, Rhodes & Ford), 4B, Frederick's Place, Old Jewry, London, E.C.2, Practising Accountant.

Rimington, John (Ford & Rimington), 59, Wellington Road South, Stockport, Practising Accountant.

Scarlett, Clement Stanley (Scarlett & Goldsack), 5, Cecil Square, Margate, Practising Accountant.

Spittle, Thomas Arthur, 17, Cleveland Road, Bradford, Practising Accountant.

Thompson, Herbert James, City Treasurer, Town Hall, Newcastle-on-Tyne.

FELLOW.

Nicholson, Robert Goldthorp, A.C.A., Borough Treasurer, Municipal Offices, Rotherham.

ASSOCIATES.

Applegate, Caroline Dorothy, Clerk to Percy E. T. Thomas, St. Margaret's House, 57/59, Victoria Street, Westminster, London, S.W.1.

Bowers, Harold, Clerk to Alfred Nixon, Son & Turner, 31, Victoria Buildings, St. Mary's Gate, Manchester.

Cameron, John Morris, Clerk to Spence, Paynter & Morris, 6, Wardrobe Place, Doctors' Commons, London, E.C.4.

Dodsworth, Gladys Elizabeth Mary, Clerk to Barron & Barron, 1, Minster Gates, York.

Drane, Harold Robert Percy, Clerk to Price, Waterhouse and Co., Schadowstrasse 1a, Unter den Linden, Berlin.

Eatough, Percy, Clerk to James Todd, 7, Winckley Square, Preston.

Foulston, George Frederick, Clerk to Keens, Shay, Keens & Co., 11, George Street West, Luton.

Hamer, John Sheppard, A.C.A. (Hindley, Hamer & Co.), 231B, Stamford Street, Ashton-under-Lyne, Practising Accountant.

Harrison, Lewis, Clerk to G. W. Warner, Maitland Street, Bloemfontein, South Africa.

Harrison, Samuel, Clerk to Price, Waterhouse & Co., National Bank Building, James Street, Liverpool.

Herbert, Teasdale Fletcher, Clerk to Bryce, Hanmer & Co., Harrington Chambers, 24/26, North John Street, Liverpool.

Hill, Laurence Metcalfe, Clerk to W. T. Walton & Son, 3, Scarbro' Street, West Hartlepool.

Kershaw, Joseph Wright, Clerk to Charles D. Buckle, 25, Cheapside Chambers, Bradford.

MCAUSLAN, PETER CAMPBELL, Clerk to A. E. Bell, 239, High Street, Ayr.

MATE, HENRY JOHN (Edward Blinkhorn, Lyon & Co.), Bank Chambers, 69, Leadenhall Street, London, E.C.3, Practising Accountant.

PAGE, DAVID GEORGE, Accountant's Department, Metropolitan Water Board, 173, Rosebery Avenue, London, E.C.1.

RICKETT, WILLIAM HENRY ABRAHAM, Clerk to Whinney, Smith & Whinney, 4B, Frederick's Place, Old Jewry, London, E.C.2.

ROSS, LEONARD, A.C.A. (Gwynne & Ross), Walker Street Chambers, Wellington, Salop, Practising Accountant.

SCHOFIELD, ROBERT HENRY, Clerk to Greenwood, Rayner & Co., 20, Bond Street, Dewsbury.

SLATTERY, FRANCIS, A.C.A. (Slattery & White), 12, Clarges Street, London, W.1, Practising Accountant.

SMITH, PERCIVAL HAVILAND, Clerk to Deloitte, Plender, Griffiths & Co., Exeter House, 97, Bute Street, Cardiff.

TAGGART, HENRY, Clerk to Edwin Guthrie & Co., 71, King Street, Manchester.

WADDINGTON, ALFRED, Clerk to Charles D. Buckle, 25, Cheapside Chambers, Bradford.

WHITEHEAD, CHARLES REID, Clerk to Harper, Groves & Co., Tower Chambers, 30A, Pride Hill, Shrewsbury.

ACCOUNTANTS CLAIM LIEN ON BOOKS.

The Trinidad Land and Finance Company, Limited, moved before Mr. Justice Tomlin in the Chancery Division on April 23rd, for an order that Messrs. Clifford & Clifford, Chartered Accountants, should deliver up to them all books and papers belonging to the company.

Mr. Jolly, for the company, said they wished to make up their accounts and file returns with the Registrar of Joint Stock Companies, but the defendants, who in 1919 at their own suggestion undertook to keep the company's accounts, had refused to hand over the books and papers. They kept the accounts until the end of 1921, but since then had not supplied a proper balance-sheet or returns.

His Lordship asked how the defendants justified retaining the books and papers.

Mr. Jolly said they contended that they had a lien on them.

His Lordship: What is an accountant's lien? I have never heard of it.

Mr. Jolly said the defendants claimed £1,196 as additional remuneration, and were threatening to present a petition for the winding-up of the company.

Mr. Nesbit (for defendants) said they claimed a lien for extra work done. They had been put to much trouble and had done a great deal of extra work owing to the difficulty of getting essential returns from Trinidad. Since the appointment of a new manager they had never received proper returns.

His Lordship asked if the defendants claimed to hold the books and exclude the company from them.

Mr. Nesbit: Oh, no! They are open to inspection in the ordinary way. The defendants' office is the registered office of the company.

Mr. Jolly said the agreement with the defendants was put an end to in August, 1924. He had not been refused inspection, but he wanted the books to be examined by another firm of accountants.

His Lordship said although it was usual for accountants to go to other offices to examine books, perhaps it would not be in accordance with professional dignity for one firm to go to the offices of another firm of accountants to examine the books of a third party. He suggested that a settlement should be come to pending the action.

After a short adjournment, Mr. Nesbit said the defendants would hand over all the books and papers necessary for the company to make up their accounts, and would give inspection of all other documents and books, and plaintiffs undertake to return the first mentioned property within six weeks. This was to be without prejudice to the question of a lien, and there would be no order except that the costs would be costs in the action.

His Lordship said he thought this was a very wise course to be taken.

Changes and Removals.

Mr. O. J. Belton, Incorporated Accountant, has commenced public practice at 77, Clanbrassil Street, Dundalk.

Mr. R. M. Blaikie, F.C.A., 27, High Street, High Wycombe, announces that from March 31st, 1926, he has admitted into partnership Mr. E. Woodley, Incorporated Accountant, Mr. A. T. Goodchild and Mr. A. E. Ginger, who have been members of his staff for many years. The title of the firm will be R. M. Blaikie & Co. A branch office is being opened at 14, Station Road, Marlow.

Mr. George H. Blair, Incorporated Accountant, has opened an office at Commercial Chambers, 3, Victoria Road, Widnes, under the name of G. H. Blair & Co.

Messrs. Edward Blinkhorn, Lyon & Co., Incorporated Accountants, announce that they have taken into partnership Mr. Henry John Mate, Incorporated Accountant, who served his articles with the firm. The business will be continued under the style of Edward Blinkhorn, Lyon & Co., at 69, Leadenhall Street, London, E.C.3, as heretofore.

Mr. James Gadsby, Incorporated Accountant, has been admitted a partner in the firm of Samuel Edward Short & Co., 17, Gluman Gate, Chesterfield.

Messrs. Gharda, Davar & Co., Incorporated Accountants, have removed to Jehangir Wadia Building, 49, Esplanade Road, Fort, Bombay.

The partnership existing between Mr. Frank Harrop, F.S.A.A., and Mr. Reginald Hindley, F.S.A.A., carried on at Manchester and Ashton-under-Lyne under the firm name of Frank Harrop, Hindley & Co., has been dissolved by mutual consent as and from March 31st, 1926. Mr. Frank Harrop will continue to practise at 10, Norfolk Street, Manchester, under the firm name of Frank Harrop & Co. Mr. Reginald Hindley will continue to practise at 231B, Stamford Street, Ashton-under-Lyne, and also at 9, Albert Square, Manchester, in partnership with Mr. John Sheppard Hamer, A.C.A., A.S.A.A., under the firm name of Hindley, Hamer & Co.

Lieut.-Colonel H. Oxley, F.S.A.A., late Corps of Military Accountants, announces that he has commenced to practise on his own account at 22, Regent Street, Barnsley.

Messrs. Page, Simpson & Fitzgerald announce that as from March 1st, 1926, they have taken into partnership Mr. Walter E. Lambert, Incorporated Accountant. The practice is being carried on under the firm name of Page, Simpson, Fitzgerald & Lambert, at Cranbrook House, 22A, Cranbrook Road, Ilford, and at Essex House, High Street, Stratford, London, E.15.

Messrs. Roy & Roy, Incorporated Accountants, 38, Rankin Street, Wari, India, have changed the firm name to A. C. Roy & Co.

Mr. G. N. Sinclair, Incorporated Accountant, has amalgamated his practice with that of Mr. H. Garner Pugh, Incorporated Accountant. The practice will be carried on at Parr's Bank Chambers and Oswyn House, Oswestry, under the style of Garner Pugh & Sinclair.

THE BUDGET.

Chancellor's Speech.

The following are the main portions of the Chancellor's speech in so far as it relates to new taxation and the disposal of the surplus arising therefrom:—

REVENUE FOR 1926-27.

Mr. CHURCHIL said: I will now proceed to forecast the revenue of 1926-27 on the existing basis. I put the various items as follows:—

Customs	£107,700,000
Excise	134,300,000
Motor vehicles duties	20,100,000
Estate duties	66,000,000
Stamps	25,000,000
Land tax and house duty ..	1,000,000
Income tax	255,000,000
Super tax	64,500,000

There is a decline in super tax, because of the remission made last year, and a converse improvement in the estate duty, because the increased duties of last year have begun to take effect.

Excess profits duty	£2,000,000
Corporation profits tax	6,500,000

This shows a very heavy drop as compared with the yield of last year. This tax is coming to an end very speedily now.

Total Inland Revenue	£420,000,000
Total tax revenue	682,100,000
Post Office	59,400,000
Crown lands	950,000
Interest on sundry loans	17,650,000

This includes £4,000,000 from Italy.

Miscellaneous ordinary receipts ..	£18,600,000
Miscellaneous special receipts ..	26,000,000

This shows a reduction of £11,000,000.

Total non-tax revenue	£122,600,000
Total revenue	804,700,000

We have thus a revenue of £804,700,000 and an estimated expenditure of £812,600,000. The prospective deficit is thus £7,900,000.

Let us review the situation. Last year's finance realised a deficit, however explainable, of £14,000,000. Next year's figures, if nothing is done, show a prospective deficit of £7,900,000. The prospects for the year after threaten us with decreases in revenue that will balance or more than balance its normal growth. They threaten us also with increases in expenditure which will probably at the very best go far to offset the fruits of further economies. Evidently, if a sound basis of our finance is to be maintained, we must act, and act in good time. I have therefore felt it my duty to seek additional resources, both temporary and permanent, in every direction open to me, and I come first of all to the sphere of Inland Revenue.

CLOSE OF EXCESS PROFITS DUTY REVISIONS.

The changes which will be proposed this year in the Inland Revenue are mainly mechanical and do not appreciably add to the burden on the taxpayer. The excess profits duty, although it was repealed five years ago, is not yet closed. It is still open to the Board of Inland Revenue or to any taxpayer to challenge any assessment which may be found to be wrongly made. The tax was charged at a very high rate in a period of great emergency. The opportunity for re-examining it and for re-reckoning was necessary, but after all these years I feel that an adequate opportunity has been given to both sides, and a clause has been framed which will bring the uncertainty to an end and close the assessment on either side once and for all. At the same time legislation will be required to validate a view of the law on a technical point affecting the computation of capital for purposes of excess profits duty, which, although undisputed for ten years, is now at this late date called in question.

ABOLITION OF THREE YEARS' AVERAGE.

I shall propose an important modification in the income tax law which will not affect the finances of this year, as twelve months' notice will be needed before it can be brought into operation. Everyone seeks for the simplification of the income tax. I have an expert committee sitting continually, and have had for many months under my personal direction, and I trust some day to frame extensive proposals. All I can say at present is that the difficulties do not diminish with careful study. There is, however, one feature common to all schemes of income tax simplification—I mean the abandonment of the three years average. I propose to sweep away the three years average and the medley of other bases with which Schedule D is encumbered, and to found that schedule exclusively on the preceding year. This, as I have said, will not come into operation until the financial year 1927; it will be impossible for the income tax authorities to make arrangements, get the forms, and make their calculations without a full year's notice. The legislation, which will follow very closely on the recommendations of the Royal Commission, will include relief for hard cases in the period of transition and the grant of the right to carry forward losses for six years. It will also include provisions to correct the anomalies which now arise when a business closes down at the end of an exceptionally prosperous year. Assuming that on a long view the aggregate profits of business in this country will tend to grow, the Exchequer on the whole will be the gainer in revenue from the change. It will, however, be the loser, in convenience. The difficulty of estimating for Budget purposes will obviously be sensibly increased. There will be fluctuations which are now merged in the three years average. That accuracy on which we now all plume ourselves will be in danger. But this change is one that is generally desired by the majority of the taxpayers, it is strongly recommended by the Royal Commission on Income Tax, and the time has come to take a definite decision in its favour.

IRISH FREE STATE AND DOUBLE INCOME TAX.

His Majesty's Government have recently been discussing with the Government of the Irish Free State certain outstanding financial questions, and the Committee will have been glad to see that we have arrived at a settlement of the problem of double income tax. That settlement was mixed up with the conclusion of a number of outstanding financial matters upon which a full report will be presented to the House in conjunction with a similar report that is being presented in Dublin. A copy of the agreement on the question of double income tax was last week laid before the House. The settlement is, briefly, that each country will tax only its own residents, and will exempt from taxation the income of persons resident in the other country, although the income arises within its own borders. Those who are resident in both countries will be chargeable by both, but given a measure of relief by both. This is a fair and reasonable arrangement. It will cost the Exchequer £200,000 in the first year and £300,000 thereafter. The agreement, so far as it affects income tax, together with certain consequential alterations of the income tax code, will be included in the Finance Bill for confirmation by the House, and I propose to circulate with the Bill a memorandum stating the details of the scheme and the administrative arrangements involved. Against the loss

which I shall suffer in this matter I can look forward to a prospective gain, not this year, but in 1927, of about £1,500,000, as the result of abandoning the three years average. In the sphere of income tax, legislation is also required to correct a technical flaw revealed by the recent judgment in the case of *Whelan* v. *Henning*. This completes my treatment of the Inland Revenue.

TAX ON BETTING.

(Mr. Churchill explained his proposals with regard to a 5 per cent. tax on betting, and stated that he estimated the yield in the first year would be £1,500,000, and in a full year £6,000,000.)

WRAPPING PAPER.

The betting tax is the only optional or luxury tax I shall put forward at the present time. There will be a duty on imported wrapping paper, to which the House has already been introduced, which was temporarily omitted from the Safeguarding of Industries Bill last autumn on account of Parliamentary pressure, and is now included in the Budget. It will be chargeable as from May 1st at 16⅔ per cent. *ad valorem*, and estimated to yield £400,000 in the first year and £550,000 in a full year.

COMMERCIAL MOTOR CARS.

I next propose to extend the system of McKenna duties to cover commercial motor cars. This duty could not be justified within the limits of the Safeguarding of Industries policy. Only one-tenth in value of the commercial motors in Great Britain is imported, and the export of British commercial motors is greater than the foreign import, so therefore there is no case for the protection of the industry. Nor is that in any way my object. The reasons on which I justify this tax are two. First of all, it is the only Customs duty I have ever heard of the imposition of which will positively simplify and diminish the work of the Customs authorities. All foreign motor cars and parts of motor cars are now taxed at the rate of 33⅓ per cent. In the midst of this important volume of merchandise there is an enclave of similar or almost similar articles freely imported—the commercial cars. The frontiers of this enclave have to be drawn in every motor shop and workshop throughout the country. The line of division between the commercial and the pleasure car is wavering and nebulous. It is becoming increasingly difficult to separate one from the other. The spare parts are in many cases identical. One type is readily converted into another permanently or for an occasion. An import duty which depends not upon the character of the article but upon the use to be made of it is bound to produce special difficulties. It has done so in this case, and it is doing so in increasing degree. That is my first reason for including the commercial motor car, although it is not a luxury within the ambit of the so-called McKenna duties. My second reason is that the tax will yield £300,000 in the first year and £350,000 in a full year. It will come into force on May 1st and the duty will be collected from that date.

We propose to re-enact Part I of the Safeguarding of Industries Act, called the "Key Industries Duty," which otherwise would lapse this year. These industries are essential factors in the national defence. The principle of safeguarding them has never since the war been seriously disputed by any of the three parties in the State. An expert committee has revised and refined these duties. The modification is slight. They yield an additional £50,000 of revenue this year, and £60,000 in a full year. Except in the case of optical glass and instruments, where the tax is increased to 50 per cent., and some other small additions to the duties, they are practically the old duties that are reimposed, but they are reimposed for a period of ten years.

THE ROAD FUND.

I come next to the Road Fund. The revenue of the Road Fund is growing rapidly. The estimate for last year was £1,000,000 over the estimate of the year before. The yield of last year exceeded this increased estimate by £500,000. The estimated taxation yield of the existing motor licence duties, which were designed in 1920 to produce about £8,000,000 a year, will yield next year no less than £20,100,000—more than £2,000,000 increase on the increased yield of last year. There is also a surplus of nearly £19,000,000 in reserve. This island is better supplied with roads than any other equal area in the world, and those roads are better maintained than in any other country. We have also a magnificent railway system on which £1,200,000,000 of British capital has been spent.

The immense developments of motor transport since the war raised several serious questions. Of these the first is: "What is the relationship of the roads to the railways, and of road transport to railway transport?" No one can be inappreciative of the great advantage to the country of motor transport. Convenience and the pleasure of millions is only a part and a lesser part. In the spreading use of the motor-lorry we have evidently obtained a new and powerful stimulus to that internal trade which exceeds, perhaps, tenfold all the overseas transactions of the country. A retrograde, or even a standstill, policy in motor transport is a folly no one is ever likely to commit or is ever likely to be allowed to commit. Motor transport will steadily increase, and the roads must not only be maintained, but progressively improved. Nevertheless, it is impossible to watch the development which is taking place, both with regard to freight and passengers, without considering its reactions upon the railways. A gentleman who introduced a deputation to me some time ago explained that the needs of the roads in the next few years would be such that £200,000,000 or £300,000,000 of new capital would scarce suffice to meet the expenditure. When we consider our limited capital and credit, public and private, and the heavy burdens that rest upon the country, we may, perhaps, occasionally ask ourselves whether the rapid expenditure in these few years of £200,000,000 or £300,000,000 upon this new means of transport would be a wise undertaking, if at the same time the results were to render obsolete and bankrupt a railway system upon which the livelihood and savings of a large part of the people depend. There must be some sense of proportion in these large issues; some effort must be made by those who discuss them to consider, not merely a particular aspect which is presented to them, or which excites their interest, but must decide upon a long and general consideration of the necessities of the nation as a whole.

INCREASED TAX ON HEAVY VEHICLES.

It will surely be agreed by motorists of all kinds that they should pay the extra wear and tear which they cause to the roads. The light and medium motor-cars and vans, broadly speaking, do this now, but there is one class of motor traffic which does not contribute its fair share, or anything like its fair share in proportion to the damage it does to the roads. The heavy motor-lorries, charabancs, and, above all, the heaviest vehicles which do not have rubber tyres, put a strain upon our roads which very few of them in their present condition are capable of bearing for any prolonged period of time. The railways complain that this competition is injurious and unfair. They say that they have to keep up their own permanent way, pay for their own signals, and, in addition, pay high rates for their competitors on the roads. Heavy motor transport will certainly make its way irresistibly;

it will certainly play an immense and growing part in our economic life, but ought to make its way on its merits, and not by receiving a virtual subsidy at the expense of the whole community, including its own rivals. It is a mere act of justice to increase the taxation on heavy vehicles to a closer correspondence with the wear and tear to the roads.

I have given prolonged study to the question of collecting the bulk of the taxation upon motors through the agency of a motor spirit tax instead of by the existing scale of licence duties. The advantages of the change are obvious to every one who thinks about the subject. Clearly, such a system of taxation would be far more closely in accord with the use of the roads by individuals and the wear and tear they impose upon them than any arbitrary scale of licence duties based upon a nominal scale of horse-power. Motorists are in favour of it, motor manufacturers are in favour of it, and it has been strongly pressed upon me by the representatives of the railway companies and of the railway trade unions. It would, because no countervailing Excise duty would be levied on home production, exercise a favourable influence and be a favourable factor in that all-important cause of developing the production of oil from coal, thus restoring our coalfields to their old position. It would only be a factor, but it would be an important factor. The difficulties are, however, as great as the advantages. In particular, the financial difficulties of the transition from one system to another have not been solved, and I am not able to make proposals to the Committee in the present Budget. The question, however, will be perseveringly examined, and I have not abandoned hope of making such a change during the lifetime of the present Parliament.

I shall propose, meanwhile, an increase in the taxation on heavy vehicles. The revised scale of these duties will be found in the White Paper. In the case of commercial goods vehicles, the new scale is estimated to produce an additional revenue in a full year of about £1,800,000, or an average increase of about one-third of these duties. For hackney vehicles, the new scale will produce an extra £500,000, or about one-fifth of an increase—that is to say, not enough to justify, in our opinion, any raising of fares—while about £45,000 extra money will be brought in in a full year by the new scale for road locomotives, tractors, and so on. As these duties have already been paid on the present scale for the calendar year, the new scale will not be brought into operation until January 1st, 1927. These new duties will yield in a full year a total of £2,300,000, of which about £1,500,000 may be expected to be received in this financial year between January 1st and March 31st. This raises the total estimated revenue from motor vehicle duties in 1926-27 to £21,600,000, while, in addition, the Road Fund starts the year with practically an extra year's revenue in reserve.

SHARE OF THE EXCHEQUER IN MOTOR DUTIES.

What is to be the share of the Exchequer in these large revenues? That the Exchequer is entitled to a share is unquestionable. I cannot accept the suggestion which has been put forward from time to time that motorists are in a different position from the rest of the citizens of the country, that they have some special right to the whole yield of any taxes imposed upon motor vehicles, and that, if the yield of these taxes exceeds what is required for the roads, those taxes should be reduced. A question of contract in matters of taxation between the State and any body of its citizens would be manifestly improper. No contractual relations in this matter of taxation have ever existed or ought ever to exist, between the State and any particular body or class of taxpayers. The hands of Parliament must be free to deal with all matters of taxation from time to time in the general interest of the whole community. Motor taxes are compulsory, like any other taxes, and can be varied, increased, diminished, redistributed, or devoted to any particular purpose or general purposes as Parliament shall determine. That is unquestionably the legal and constitutional position, and that position is in no way modified, in our judgment, by declarations of policy made in quite different circumstances by particular Ministers or particular Governments in former Parliaments.

If that is the law and the constitutional position, let us look at the equity of it. The State has made a liberal provision for the roads since the war. Immediately after the armistice, when the roads were neglected, when the Road Fund was depleted, and when the Exchequer conceived itself to be endowed with limitless wealth, not only were the £8,000,000, which the motor licence duties were then estimated to yield, devoted to road improvement and maintenance, but a further capital sum of over £8,000,000 was granted from the Exchequer as capital assistance to supplement the revenues of the fund. Moreover, the Exchequer has continued to provide, and is now continuing to provide through the Local Taxation Account, that unallocated balance of the assigned revenue system, about £1,500,000 a year, which since 1888 has taken the place of the old Exchequer grant for main roads. Above and beyond this, the Exchequer has given considerable assistance to road work since 1920 and has gone on paying a large and heavily increasing sum for the extra police, Metropolitan and provincial, required for point duty in consequence of the ever-increasing number of motor-cars on the road.

THE ROAD FUND.

It is this situation which Parliament must review, and which Parliament, with plenary authority, is entitled to review. His Majesty's Government have decided to propose to Parliament that £7,000,000 shall be transferred to the Exchequer out of the balance of, approximately, £19,000,000 in the Road Fund, and for the future we propose that the revenue from motor taxation shall be divided between the Road Fund and the Exchequer on the broad principle that what is raised on account of wear and tear shall go to the roads and the balance, the luxury or pleasure aspect of it, shall go to the State.

Now I come to the final distribution of the proceeds of the tax. Of the £21,500,000, which immense sum is expected to be realised in the coming year from the old duties, increased as I have described, the Exchequer will take one-third of the yield of the duties on private motor cars and cycles, that proportion being attributed to the luxury or pleasure aspect of motoring. This proportion will be continuous; it will grow with the general yield of the duties. It amounts in the present year to approximately £3,500,000. The statutory payments to the local authorities in lieu of the old carriage licence duties will continue to draw £600,000 a year. All the rest of the duties, including, that is to say, two-thirds of the duties on private motor cars and cycles, and the whole of the increased yield from the commercial and hackney traffic, will go to the Road Fund, which will have at its disposal a revenue of £17,500,000 in the coming year.

When the increased duties are in full operation next year and the number of vehicles has further increased, as no doubt it will, this revenue will be considerably augmented, but even in the present year, after deducting the £3,500,000 required by the Exchequer, there will be available for the Road Fund out of revenue an amount of £600,000 greater than the original estimate for last year and slightly greater than the

total received by the Road Fund last year. In addition, the Fund will have an available balance of nearly £12,000,000 on which it can draw for the execution of its present extensive programme of road and bridge work, and for undertaking new improvements. In all, the amount provided for road purposes in the coming year will be £31,000,000, or £3,500,000 more than was spent on the roads last year. There will, therefore, be no diminution in the programme of expenditure of the Road Department, nor will its resources be rigidly fixed. On the contrary, they will grow with the growth in the wear and tear upon the roads. This wear and tear is tending each year to effect the increased mileage on the roads, especially on roads not hitherto classified. We contemplate in future a steady extension of grants to cover the greater proportion of total mileage. Last autumn I agreed with the Minister of Transport to make an additional £750,000 a year available in the present financial year to be distributed amongst authorities essentially rural in their character as assistance towards the cost of maintenance of unclassified highways under their charge. On a further review of the position, we have decided that an additional £500,000 should be set aside in like manner for the purpose of making grants towards the maintenance and repairs of such unclassified roads in Great Britain. Thus, in dealing with the Road Fund, we have secured, or we are seeking to secure, subject to the assent of the House of Commons, first of all, a fair adjustment of heavy traffic between the roads and railways; secondly, a new source of revenue to the State; thirdly, the largest programme of road development ever undertaken; and, fourthly, further special assistance to rural roads.

Still pursuing my quest for money for the public service, I come to a windfall which is peculiarly refreshing in its character. When the Excise duty on beer was progressively increased during the war, the period of one month's credit hitherto granted to the brewers for the payment of duty was successfully extended by Parliament, at the discretion of the Commissioners of Customs and Excise, first of all to two months, and then to three months. The Chancellor of the Exchequer has statutory powers, without fresh legislation, to reduce this period, should he consider it equitable. I propose, therefore, to reduce it from three months to two months. As a consequence, I should collect 13 months' revenue from beer in this financial year. The brewers will have the option of paying the extra month's duty in instalments throughout the year. This will produce a once-for-all payment of £5,500,000, and, although I have power to do this without legislation, I thought it would be more convenient, and also more suitable, to insert a clause in the Finance Bill for the purpose, and the issue will thus be submitted to the judgment and discussion of Parliament.

THE FRENCH DEBT.

I turn next to the French war debt. In my negotiations with M. Caillaux, the standard payment of £12,500,000 was not to begin until the year 1930. There was to be a ladder—*échelle* was the word used—of gradually increasing payments which were suggested by us Subject to any reaction which may be produced by the Franco-American settlement on the principle of *pari passu*, the quota appropriate to the present year was to have been £4,000,000. The many changes in the French Ministry of Finance and the political situation in France have hitherto delayed the final conclusion of this arrangement. I have good reason, however, to expect a visit from the French Minister of Finance very shortly after the Budget, and I have received from M. Péret an assurance that, without prejudice to the impeding settlement between us, the French Government undertake to make an unconditional minimum payment of £4,000,000 during the current financial year on the sole credit of France. This practical step, this interim step, which M. Péret has taken shows a desire to arrive at a settlement, and it is, I am sure, of good augury for our coming discussion. The Committee should also welcome it as a proof of the determination and evidence of the power of France to strengthen her credit by the appropriate regulation of the external debt.

I have now finished all the immediate search for revenue and resources. The length of time which it has taken me to detail to the Committee, and to detail to the Committee those results only which have been fruitful, will, perhaps, show that it has not been a short or an easy task, but, in the result, the appearance of the national balance-sheet is considerably improved. I started with a prospective deficit of £7,900,000. Since then we have added by new duties on imported wrapping paper and on commercial motor-cars, and by modifications in the key industry duties, £750,000; from the Road Fund surplus, £7,000,000; from the new Exchequer share in motor taxes, £3,500,000; from the betting tax, £1,500,000; from the shortening of the brewers' credit, £5,500,000; and from the French provisional debt settlement, £4,000,000. This makes a total of £22,250,000. From this must be deducted the loss of £200,000 due to the arrangement of our double income-tax, and, making allowance for this, the deficit of £7,900,000 is thus converted into a surplus of £14,150,000.

DISPOSAL OF SURPLUS.

What shall we do with it? I will not conceal from the Committee that I have been sorely tempted. I have been tempted to give a portion in relief of the taxpayer; but let me reassure the Committee at once that I have resisted the temptation. I have risen superior to it. A long view of public finance in no way justifies a remission of taxation. In this Parliament we must continue to think for more years than one. There is too much prospective shrinkage in the yield of the moribund taxes and in the state of the Special Miscellaneous Receipts to justify weakening our resources this year. Moreover, the £7,000,000 reclaimed from the Road Fund surplus and the £5,500,000 from the beer duties are not annual revenue. They are only windfalls—windfalls produced not only by the wind, but by a certain judicious shaking of the trees.

At this point the Committee may remember that in consequence of the coal subsidy we had a deficit last year of £14,000,000. It would probably not be considered a deficit in any other country in the world. It means that we are paying our way and paying off very large sums of debt. It does not mean that we have spent more than we raised in taxation. It means that we have, in effect, reduced the £50,000,000 that should be devoted to the new sinking fund to £36,000,000, and we have to that extent fallen last year below our programme of debt redemption which we had set before ourselves. I am certainly not going to argue as if it were the immutable law in all circumstances that the only way to improve your credit and to create favourable conditions for debt conversion operations is to pay off ever-increasing quantities of debt. I am not making any such general claim. It is not the only way, but it is one way, and it is a very good way. Every repayment of debt liberates an equal sum to support industry and commerce. Moreover at the present time specially we have to consider how last year's deficit occurred. I share the responsibility in full for the coal subsidy. I was strongly in favour of

it. Whatever may happen in the immediate future I am certain that what we did last August was only right and prudent; but every subsidy is a questionable policy. A subsidy that is paid out of borrowed money, or which leaves the national finance in a deficit, or which prevents the carrying out of financial policy deliberately conceived—such a subsidy is not questionable: it is vicious. It would be altogether too easy for us to get into the habit of turning awkward corners and delaying unpleasant ordeals simply by whittling away the provision which successive Parliaments, Governments, and parties have considered necessary for the redemption of the National Debt. The only check upon such expedients as subsidies, however legitimate upon occasion they may be, is the finding of the money out of revenue, annual or occasional. There are many features of our national life which rightly give rise to misgivings and anxieties, but no one even here at home denies that we have maintained a very strict system of finance. The Coalition Government, the Conservative Government, the Labour Government—I gladly recognise the orthodoxy of the right hon. member for Colne Valley (Mr. Snowden)—all these Governments, differing on so many issues, have with equal consistency maintained strict and severe finance. Moreover, we are quite strong enough to do it. There is no need, there would be no excuse to show failure or weakness in carrying out our purpose, I must, however, pray in aid the surplus of £4,000,000 which resulted from the Budget of my right hon. friend the member for Colne Valley, and which in conformity with the law was devoted last year to the old sinking fund. We have, therefore, devoted in 1925-26 not £36,000,000 but £40,000,000 to debt redemption out of revenue. We are £10,000,000 short. In order to fill the gap and maintain the operation of the £50,000,000 sinking fund I propose to increase the new sinking fund for 1926-27 from £50,000,000 to £60,000,000. I am very sorry indeed to offer such austere fare to the Committee, but I am sure that having regard to all the circumstances of the present time it is the right thing to do, and thus we shall in fact have paid the whole £24,000,000 of the coal subsidy out of current resources without impairing the £50,000,000 sinking fund provided for the reduction of debt. That is the objective upon which all my efforts during the last six months have converged. It is a limited objective; it is a modest objective, but such as it is it has been attained.

THE ESTIMATED SURPLUS.

I now proceed to balance the Budget of 1926-27. The total estimated expenditure, including the £60,000,000 sinking fund, is £820,641,000. That leaves me with a prospective surplus of £4,109,000 and out of this if there is a peaceful settlement of the coal difficulty, I shall have to meet any expenses arising out of the Report of the Coal Commission and also to narrow the gap which will exist upon the cessation of the coal subsidy in some of the mining districts. This surplus will also have to cover the ordinary contingencies for which surpluses are reserved in every financial year. I have in all my calculations assumed throughout a peaceful issue from the industrial difficulties in which we are all of us involved, and all my estimates are based on a peace footing. That is the only basis on which any estimates can be framed. If, contrary to the national wish and hope, a prolonged paralysis of industry overwhelms us, I shall be forced to propose supplementary taxation in order to meet the loss which will fall upon the revenue and the expenses which will also fall upon us. And I think it right to state at this moment that such supplementary taxation will comprise substantial increases both in direct and indirect taxation. On the assumption, however, that this unpleasant experience will be avoided let us see what the position will be next year—that is, the year 1927-28. The £4,000,000 provided in the estimates this year for the April payment of the coal subsidy will not appear next year. I am keeping in hand £3,000,000 in case it may be necessary to have a tapering subsidy and for other purposes. This £7,000,000 will not recur next year, and therefore, apart from other economies, we have a right to expect that we shall be £7,000,000 better off. The new sinking fund will be reduced by £10,000,000 to £50,000,000 and the betting tax is estimated to raise in a full year about £4,500,000, and the change in income tax from a three years average to the preceding year basis will, it is anticipated, improve the revenue by another £1,500,000, I have, therefore, a total relief in prospect of, at any rate, £23,000,000. To what extent this will emerge as a definite advantage will depend first of all on how far the new economies cancel the automatic growth of expenditure, and secondly on how far the normal growth of permanent taxation balances the loss from moribund taxes and special receipts. If the double equipoise is maintained, both in expenditure and in revenue, we shall certainly find ourselves in a more satisfactory position next year than we are this year; and, in any case, we shall have made effective precautionary provision against the future. Apart from those unforeseeable events which play so large a part in the vicissitudes of human life, we can see our way clearly to the finance of two successive years, and we must meet emergencies with courage as they come.

FINANCIAL STATEMENT.

The following are extracts from the White Paper issued by the Chancellor of the Exchequer when introducing the Budget:—

Savings Certificates.

In accordance with the recommendations of Cmd. Paper 2610, holders of Savings Certificates of the first issue will be given the following options:—

1. To continue to hold these certificates, if they so desire, until March 31st, 1932, with interest after the tenth year from the date on which the certificate was bought at one penny a month on each certificate originally costing 15s. 6d.

Holders who desire to exercise this option need take no action before 1932.

2. To convert through the Post Office, without expense to themselves all or any part of their holdings, not being less than £50, into 4½ per cent. Conversion Loan (1940-44) at the market price of the day.

3. Provided that part of the holding has reached the ten years maturity, to convert any part of the holding, not being less than £20, into a special Savings Bond. The Bond will bear interest at 4 per cent. per annum, payable half-yearly on January 1st and July 1st, and will be repayable at £103 for each £100 nominal value ten years after the date of issue. To safeguard holders against capital depreciation, the Bonds will be encashable at six months' notice from any date at par plus accrued interest. Interest on the Bonds will be paid without deduction of Income Tax, but if the holder is liable to tax it must be included in his Income Tax return and tax paid thereon. The maximum holding will be £500.

Savings Bonds will not be on sale but will be issued only in exchange for certificates of the first issue.

The part of the scheme included under (2) and (3) above will come into force on a day to be announced, when the necessary Parliamentary authority has been obtained.

Holders who convert their certificates in the manner indicated at either (2) or (3) above will then be free to purchase further Savings Certificates of the current issue, provided that they do not hold more than 500 certificates in all at one time.

When certificates which have not reached ten years are converted either into Conversion Loan or Savings Bonds, they will be treated as worth the capital originally paid, 15s. 6d., plus one penny for each month since they were bought. This represents a bonus as compared with the price at which the certificates could be cashed.

Nothing in these arrangements affects the right of the holder of any Savings Certificates, if he so desires, to demand at any time, the amount due to him under the terms on which he bought the certificates.

MOTOR VEHICLE DUTIES.

I. Hackney Motor Vehicles.

Seating Capacity.	Present Scales.		Proposed Scale for all Districts.
	In the Metropolitan Police Area and such other Districts as the Minister of Transport may fix.	In all other Districts.	
	£	£	£
Not exceeding 6 persons	15	12	15
Over 6 and not exceeding 8 persons	30	24	15
,, 8 ,, ,, 14 ,,	30	24	30
,, 14 ,, ,, 20 ,,	45	36	45
,, 20 ,, ,, 26 ,,	60	48	60
,, 26 ,, ,, 32 ,,	72	60	72
,, 32 ,, ,, 40 ,,	84	70	84
,, 40 ,, ,, 48 ,,	84	70	96
,, 48 ,, ,, 56 ,,	84	70	108
,, 56 ,, ,, 64 ,,	84	70	120
,, 64	84	70	120 ★

★With an additional £1 10s. for each person in excess of 64.

II. Commercial Goods Vehicles.

Unladen Weight.	Present Scale.	Proposed Scale.
	£	£
Electrically propelled vehicles not exceeding 25 cwts.	6	6
Other vehicles:—		
Not exceeding 12 cwts.	10	10
Over 12 cwts. but not exceeding 1 ton	16	16
,, 1 ton ,, ,, ,, 2 tons	21	26
,, 2 tons ,, ,, ,, 3 ,,	25	40
,, 3 ,, ,, ,, ,, 4 ,,	28	48
,, 4 ,, ,, ,, ,, 5 ,,	30	54
,, 5 ,,	30	60
With an additional duty in any case if used for drawing a trailer of	2	10

Note.—Vehicles constructed and used for the conveyance of goods and materials otherwise than in the course of trade will come within this paragraph instead of within paragraph 6 (horse power basis) of the Second Schedule to the Finance Act, 1920.

III. Tractors and Road Locomotives

(other than those on which a 5s. duty is now charged or those used for haulage solely in connection with agriculture).

Unladen Weight.	Present Scale.	Proposed Scale.
	£	£
Not exceeding 2 tons	21	21
Over 2 tons but not exceeding 4 tons	21	25
,, 4 ,, ,, ,, ,, 6 ,,	21	30
,, 6 ,, ,, ,, ,, 7¼ ,,	21	35
,, 7¼ ,, ,, ,, ,, 8 ,,	25	40
,, 8 ,, ,, ,, ,, 10 ,,	28	50
,, 10 ,, ,, ,, ,, 12 ,,	28	60
,, 12 ,,	30	60

THE CHARTERED INSTITUTE OF SECRETARIES.

Country Conference.

This conference will be held in the City of Bristol on Thursday and Friday, May 6th and 7th.

On Thursday, May 6th, the proceedings will open with a civic welcome by the Lord Mayor of Bristol (Alderman Frank Moore, J.P.) at 10.30 a.m. at the University. The business of the conference will then commence, under the chairmanship of the President of the Institute (Mr. Henry Clark), with a paper by Mr. W. G. Hislop (Member of the Institute Council), on "Joint Stock Principles in Relation to Commercial, Industrial and Social Developments." This will be followed by a discussion.

In the afternoon a visit will be made by road—viâ the Downs, with a view of Clifton Suspension Bridge and the famous Avon Gorge—to the Avonmouth Docks. Tea will be provided at the kind invitation of the Chairman and members of the Bristol Docks Committee.

In the evening, at 7 p.m., the conference dinner will take place at the Grand Hotel, at which the President of the Institute will preside.

On Friday, May 7th, the conference will resume at 10.30 a.m., with a paper on "System in the Share Department," by Mr. P. F. Knightley, D.S.O., A.C.I.S., of the Anglo-Persian Oil Company. This will be followed by a discussion.

In the afternoon, arrangements have been made for a visit by road to Cheddar Gorge and Caves, and to Wells Cathedral, arriving back in Bristol about 7.

On Thursday and Friday, during the business meetings, the lady visitors will be shown over Messrs. Fry's Chocolate Works on Thursday morning, and Messrs. Wills' Tobacco Works on Friday morning by a committee of local ladies.

Professional Appointment.

Mr. S. Fawcett-Peck, A.S.A.A., City Treasurer of Bloemfontein, South Africa, has been unanimously appointed Town Clerk of that city in succession to Mr. J. P. Logan, F.S.A.A., who is retiring on pension.

Messrs. Chipchase, Wood & Co., Middlesbrough, issue an interesting office magazine contributed by their staff, of which copies have been sent us. The editor is Mr. C. L. Hamer, A.C.A., A.S.A.A.

DOUBLE INCOME TAX.

Agreement between the British Government and the Government of the Irish Free State.

The following Agreement dated April 14th, 1926, is signed by Mr. Churchill and the Finance Minister of the Irish Free State:—

The British Government and the Government of the Irish Free State, being desirous of concluding an Agreement for the reciprocal exemption from income tax and super tax of persons who are resident in Great Britain (including Northern Ireland) or in the Irish Free State but are not resident in both countries and for the reciprocal granting of relief from double taxation in respect of income tax (including super tax) to persons who are resident in both countries, and being desirous of making such supplemental consequential and incidental provisions as appear necessary or proper for the purposes of such Agreement, have agreed as follows:—

1.—(*a*) Any person who proves to the satisfaction of the Commissioners of Inland Revenue that for any year he is resident in the Irish Free State and is not resident in Great Britain or Northern Ireland shall be entitled to exemption from British income tax for that year in respect of all property situate and all profits or gains arising in Great Britain or Northern Ireland and to exemption from British super tax for that year.

(*b*) Any person who proves to the satisfaction of the Revenue Commissioners that for any year he is resident in Great Britain or Northern Ireland and is not resident in the Irish Free State shall be entitled to exemption from Irish Free State income tax for that year in respect of all property situate and all profits or gains arising in the Irish Free State, and to exemption from Irish Free State super tax for that year.

(*c*) Exemption under this Article may be given either by discharge or by repayment of tax, or otherwise, as the case may require.

2. Relief from double taxation in respect of income tax (including super tax) in the case of any person who is resident both in Great Britain or Northern Ireland and in the Irish Free State shall be allowed from British income tax and Irish Free State income tax respectively in accordance with and under the provisions of sect. 27 of the Finance Act, 1920, provided, however, that

(*a*) The rate of relief to be allowed from British income tax shall be one-half of that person's appropriate rate of British tax or one-half of his appropriate rate of Irish Free State tax, whichever is the lower;

(*b*) The rate of relief to be allowed from Irish Free State income tax shall be one-half of that person's appropriate rate of British tax or one-half of his appropriate rate of Irish Free State tax, whichever is the lower;

(*c*) For the purpose of determining that person's appropriate rate of British tax, the rate of British income tax shall be ascertained by dividing by the amount of his total income from all sources as estimated for income tax purposes the amount of tax payable by him on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of the said sect. 27 as amended by this Article, and the rate of British super tax shall be ascertained by dividing the amount of the super tax payable by that person by the amount of his total income from all sources as estimated for super tax purposes;

(*d*) For the purpose of determining that person's appropriate rate of Irish Free State tax, the rate of Irish Free State income tax shall be ascertained by dividing by the amount of his total income from all sources as estimated for income tax purposes the amount of tax payable by him on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of the said sect. 27 as amended by this Article, and the rate of Irish Free State super tax shall be ascertained by dividing the amount of the super tax payable by that person by the amount of his total income from all sources as estimated for super tax purposes.

3.—(*a*) Any person who is entitled to exemption from British income tax by virtue of Article 1 (*a*) of this Agreement in respect of property situate and profits or gains arising in Great Britain or Northern Ireland shall, if and so far as the Oireachtas of the Irish Free State so provides, and subject to any exemption or relief to which he may be entitled under the laws in force in the Irish Free State, be chargeable to Irish Free State income tax in respect to such property profits or gains.

(*b*) Any person who is entitled to exemption from Irish Free State income tax by virtue of Article 1 (*b*) of this Agreement in respect of property situate and profits or gains arising in the Irish Free State shall, if and so far as the British Parliament so provides, and subject to any exemption or relief to which he may be entitled under the laws in force in Great Britain and Northern Ireland, be chargeable to British income tax in respect of such property profits or gains.

(*c*) Any person who is entitled to relief by virtue of Article 2 of this Agreement shall, subject to such relief, be chargeable, if and so far as the British Parliament so provides, to British income tax in respect of property situate and profits or gains arising in the Irish Free State in like manner in all respects as if he were resident in Great Britain or Northern Ireland but not resident in the Irish Free State and shall, subject to such relief as aforesaid, be chargeable, if and so far as the Oireachtas of the Irish Free State so provides, to Irish Free State income tax in respect of property situate and profits or gains arising in Great Britain or Northern Ireland in like manner in all respects as if he were resident in the Irish Free State but not resident in Great Britain or Northern Ireland.

4.—For the purposes of this Agreement a company, whether incorporated by or under the laws of Great Britain or of Northern Ireland or of the Irish Free State or otherwise, shall be deemed to be resident in that country only in which its business is managed and controlled.

5.—The Commissioners of Inland Revenue and the Revenue Commissioners may from time to time make arrangements generally for carrying out this Agreement and may in particular make such arrangements as may be practicable to avoid the collection of both British and Irish Free State income tax on the same income without allowance for any relief due under this Agreement, and the Commissioners of Inland Revenue and the Revenue Commissioners may make such regulations as they respectively think fit for carrying out such arrangements.

6.—The obligation as to secrecy imposed by any enactment with regard to income tax shall not prevent the disclosure by any authorised officer of the British Government to any authorised officer of the Government of the Irish Free State or by any authorised officer of the Government of the Irish Free State to any authorised officer of the British Government of such facts as may be necessary to enable full effect to be given to this Agreement.

7.—Any question that may arise between the parties to this Agreement as to the interpretation of this Agreement or as to any matter arising out of or incidental to the Agreement shall be determined by such tribunal as may be agreed between them, and the determination of such tribunal shall, as between them, be final.

8.—This Agreement shall be subject to confirmation by the British Parliament and by the Oireachtas of the Irish Free State and shall have effect only if and so long as legislation confirming the Agreement is in force both in Great Britain and Northern Ireland and in the Irish Free State.

BANKRUPTCY (AMENDMENT) BILL.

Debate on Second Reading.

In the House of Commons on April 20th.

Mr. A. M. SAMUEL (Secretary, Overseas Trade Department): I beg to move: "That the Bill be now read a second time." It is of a non-contentious nature. Hon. Members will remember that after the collapse of the post-war boom there was a large number of fraudulent bankruptcies, particularly in the wool and textile trades, which have brought about losses of between £3,000,000 and £4,000,000 to textile firms owing to what I might call long firm swindles. The Association of British Chambers of Commerce approached, and I accompanied a deputation to, the President of the Board of Trade. He was very sympathetic. In March, 1924, I introduced a private Bill to deal with the Bankruptcy Act of 1914 by amendment. After some time, the Right Hon. gentleman who was then President of the Board of Trade said if I would withdraw my Bill then before the House he would give a departmental inquiry, which would look into the whole working of the 1914 Bankruptcy Act with a view to stopping dishonest persons from robbing their neighbours by their long firm swindles. A Committee was appointed, and I had the pleasure of sitting on it. Mr. H. Spencer, of Bradford, who was then in the House, and the Chairman of the London Chamber of Commerce also served on the Committee, as did the Hon. Member for Finsbury (Mr. Gillett). The Committee sent in a report in January, 1925. It was unanimous, and a Bill has been drafted which has given effect to all the recommendations of the Committee's report, with the exception of one which has not been adopted, that dealing with compulsory discharge. I will not trespass on the patience of the House by going through clause by clause of this technical Bill. It is meant to stop dishonest people robbing honest people; it will not touch the honest little man at all; it will merely check those persons who have ridden rough-shod over the law.

Sir HENRY SLESSER: I only intervene in this debate because there is one question raised in this Bill which is of such considerable importance that I think the Hon. Member who has moved the second reading should know of the point and give it his careful consideration before it reaches the Committee stage. This Bill is, of course, in part a fruit of the Labour Government. The Committee which reported on this Bill was appointed by my Right Hon. friend the Member for Seaham (Mr. S. Webb). I am not criticising the Bill as a whole, but there is one very important change in the Bill which the House should fully understand, and that is the change in Clause 7 which enforces upon traders, subject to a certain qualification, the obligation of keeping very complete accounts. Those accounts are described in the Bill as being sufficient to exhibit or display transactions, the financial position of the trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and where the trade or business has involved dealings in goods, statements of annual stocktakings. The Hon. Member said this Bill did not in any way touch the small men. It will be quite evident to the House that although this change is not to come into operation for two years, even then, to impose without a qualification—and there is a qualification, with which I will deal in a moment—on every small trader, every small shopkeeper, every smallholder, the obligation to keep full books and accounts, with the resulting liability that if, unfortunately, he became bankrupt and those accounts were not sufficient he might be guilty of a criminal offence, it is a very serious matter indeed. I want to be perfectly frank with the House. There is a protection for the small man, but that protection, in my submission, is entirely unsatisfactory, because there is put upon every trader, however small, however humble, the obligation to produce full accounts, and many of them are almost unable to write. When I was acting as a Civil Liability Commissioner I had hundreds of shopkeepers before me who could scarcely write and never kept accounts, but bought their goods for so much and sold them for so much, and kept the balance in an old cigar box. It is protection of an unsatisfactory kind, in my opinion. It is that if a person becomes bankrupt and the unsecured liabilities do not exceed £500, then the obligation to keep accounts is not applied. That means that when the man goes into business he does not know whether he has a duty to keep accounts or not. It is only after a failure, and the amount of the failure is ascertained, that his criminal liability is taken away. It is an elementary proposition of criminal law, as I understand, that no man shall be liable criminally unless the act is a criminal act at the time he performs it. It is most vicious legislation to have retrospective liability. There is one more protection. If this trader proves in the circumstances in which he trades that the omission was honest or excusable, he is not liable. But what does that mean? Here is a small man who does not keep accounts, and who is required by the Bill to keep full and complete accounts, however small the business. A coffee-stall keeper or other small trader does not do it, and perhaps cannot do it. Then comes this liability. He fails, and then he commits a criminal act. It may be that he can say the omission was honest and excusable. But what a risk he runs! What I wish to ask the Hon. Member is whether between now and the Committee stage, while I think we all agree that the substantial traders should be compelled to keep proper books of accounts, this Clause cannot be reconsidered, and businesses of a certain type specifically exempted from the Clause, so as not to be dependent on a subsequent occasion; it was honest. I only mention this matter on Second Reading because it is really substantial. At present only the few thousand persons who actually become bankrupt are liable if they do not keep accounts, but this is going to impose an obligation upon a million people or so—in fact, every trader in the country. I ask the Minister, therefore, to consider this before the Committee stage, and see whether this Clause—although I agree that in its present form it is the recommendation of the Committee—is not misconceived, and whether specifically certain people could not be compelled to keep accounts, and certain humble people be exempted from that obligation.

Mr. GILLETT: As a member of the Committee appointed by the last Government to consider this subject, I naturally support the Bill now before the House, because it practically carries out the recommendations of the Committee. As a matter of fact, I believe only one recommendation of the Committee has not been introduced in this Bill, and that deals with the question of the discharge of bankrupts. I understand that the reason why this recommendation has not been carried out is simply because of the question whether the expense involved in seeing that every bankrupt is actually discharged would really be worth the money involved. That was a question before our Committee at the time, but we thought, in the circumstances, it would be worth the additional cost involved. I must say one word in connection with the remarks made upon Clause 7 by my Hon. and Learned Friend. I think that possibly he has exaggerated the difficulties

to a small extent. The point that he raised was certainly before the Committee. What we wanted to guard against was the frauds committed deliberately by men in cases where, especially in Yorkshire, they deliberately defrauded the manufacturers. One of their ways of doing it was by leaving no books behind, so that it was impossible to ascertain the destination of goods which had been ordered and then sold again before they were paid for. The bankrupts took very good care to have no books that would give the information. The Clause is an attempt to compel people in that position to have books, so that the destination of goods may be traced. Then, of course, we had to guard against the hardship upon the small business man. We felt that it was quite impossible to take the turnover of a business as the standard, because we were dealing with cases where there were no books whatever. My Hon. and Learned Friend referred to the man who ran a small coffee shop. The Committee felt that the sum of £500 would have secured the position of these shops. The House must remember that as soon as a man gets anywhere near the income tax limit he is compelled, in order to satisfy the Income Tax Commissioners, to produce books and accounts in order to show what his business is bringing in. Therefore you have to deal only with the small shop that would in no way be thought by the Income Tax Commissioners to be liable to pay income tax. I agree in hoping that the Minister will consider whether £500 should be the limit. My own opinion is that it is only a question whether the £500 should be raised to £1,000 in order to be absolutely certain that the small shopkeeper will not have a hardship inflicted on him. But I do not think that the danger to the very small shopkeeper is such as my Hon. and Learned Friend suggested. It is difficult to know how we can get hold of the men who are abusing the present position and at the same time not inflict a hardship on the small shopkeeper. I think the Committee which considered the question were very fortunate in securing the service of so able a Chairman as Mr. E. W. Hansell, who certainly led us with great ability.

Sir P. CUNLIFFE-LISTER: The speech to which we have just listened shows how very carefully the Committee considered the questions with which they were confronted, and they tried to safeguard the real interests of the people who ought to be safeguarded. We have paid particular attention to the drafting of this Measure, and we feel that it will really provide a very considerable safeguard to the people who are ignorant of keeping accounts. The unsecured liability must be over £500, and in any case the prosecution can be made only on the order of the Court. I can assure the House that the points raised will receive careful consideration. They seem to me to deal with exactly the kind of thing that ought to be thrashed out in Committee, and the Government will therefore give them the most careful consideration they can. I would like, in conclusion, to join with the Hon. Member for Finsbury (Mr. Gillett) in paying a tribute to the excellent work of the Chairman of the Committee, Mr. Hansell.

Mr. BUCHANAN: I do not wish to delay the passage of this Bill, and I understand that my party have come to an arrangement on the matter, but my first intention was to oppose the Second Reading and carry that opposition to a division. I agree with the Hon. Member for South East Leeds (Sir H. Slesser), and I take a serious view in regard to this Clause. I cannot accept the view of the Hon. Member for Finsbury (Mr. Gillett). It is quite common in my own constituency for people to accept income tax assessments, although they have kept no books at all, because the Income Tax Authorities strike a figure by some means or another, and it is found that people who do business of a much greater value than merely £500 keep no books at all. My own view is that this Bill is open to serious criticisms from the smaller people, and I hope that in Committee the President of the Board of Trade will at least consider doubling the amount from £500 to £1,000.

Question put, and agreed to.

Bill read a second time, and committed to Standing Committee.

Reviews.

Income Tax in relation to Local Authorities. *Second Edition. By F. Ogden Whiteley, F.S.A.A., City Treasurer, Bradford. London: Gee & Co. (Publishers), Limited, 6, Kirby Street, E.C. (240 pp. Price 12s. net.)*

While there are numerous books on income tax there are very few dealing with the subject specially from the point of view of municipalities. Mr. Whiteley's book will accordingly be found of particular value to those specially concerned with municipal matters. In the second edition the book retains in the main its original character, but has been brought up-to-date in regard to the developments which have taken effect since the first edition was published. The author deals with all aspects of the subject and discusses the numerous cases which have been decided in the Courts. He also incorporates as an Appendix various memoranda issued by the Council of the Institute of Municipal Treasurers and Accountants from time to time in relation to allowances for wear and tear and renewals, trading profits as "set-off" against interest on loans, &c. The work is a very complete handbook on the subject of income tax law and practice as applicable to municipal corporations.

Economics for Examinees. *By A. Watkins, M.A. (Econ.), A.C.A., and E. Miles Taylor, F.C.A. London: Macdonald and Evans, 8, John Street, Bedford Row, W.C. (120 pp. Price 6s. net.)*

The difficult subject of economics is here summarised for the benefit of students in a form which is intended to cover the ground of questions set at accountancy examinations, which in the ordinary course entail a very wide range of reading. It does not follow that the student can dispense with such reading, but it is useful for him to have the subject summarised in such a way as to concentrate his mind on the principal points which require attention, so that he may acquire a clear understanding of the central laws and principles. From this point of view the book is valuable, as it contains in highly condensed form under convenient headings a great deal of information.

Profit Sharing. *By M. E. Askwith, A.C.A. London: Duncan Scott, Limited, Bush House, Strand, W.C. (120 pp. Price 5s. net.)*

The portions of this book which will probably be of most interest to professional accountants are Chapters 3 and 5, the former dealing with profit sharing in practice and setting out the essentials of profit-sharing schemes with examples of the main provisions of schemes which have actually been in operation; and the latter supplying a model system of profit sharing giving particulars of the various clauses of the scheme. The rest of the book discusses the trade union attitude and sets forth reasons for and against profit sharing, while the Appendix gives the text of the Co-Partnership Bill of 1923.

Basic Principles of the Common Law of England.

A LECTURE delivered before the South Wales and Monmouthshire District Society of Incorporated Accountants by

MR. CAREY EVANS, B.C.L., M.A.

Mr. EVANS said: When I addressed you last year I took a subject which was not one of the subjects the students among you are supposed to study, but one which it is necessary to know something about in order to understand and appreciate many branches of the law which come more directly to your notice. The paper on "Agency" was very kindly received, and you have done me the honour of asking me to give another this year, so I have ventured to do the same thing, and have chosen as my subject, "The Common Law of England," because I think that it is the first essential to an intelligent study of any branch of English law to know what is meant by the common law, and what are the chief characteristics of that great system.

THE ORIGIN OF THE COMMON LAW.

The common law deserves the high praise that has been repeatedly bestowed upon it, and it has grown from being the municipal law of England, to become the basis of law throughout all the English-speaking world. Wherever you find the English language, you find the English common law, and it is no mere accident that wherever the English common law prevails there is a wonderful respect of law, and what is called the rule of law is paramount. I could spend the whole of the short hour which this paper is to occupy in delving into the obscure origin of the common law, but while this would be interesting I am sure it would not be very helpful to you. In its origin, it was the old Saxon custom law, improved and modified by the Norman invaders. Before Parliament was ever assembled—before equity was ever heard of—the common law was administered by the Judges of these lands.

The precise relation between custom and law is a matter of great dispute amongst jurists; but whether the Judges enforced custom and called it law, or whether they adopted into the law what good customs they found to exist, certain it is that custom was the first basis of the common law. It will readily be seen how the wonderful system of "precedent" which is so vitally important in English law to-day sprung up. If one Judge had decided that a valid custom existed to a certain effect, a succeeding Judge on circuit would naturally hesitate long before disturbing the earlier view. The system of precedent, however, early became very much stronger than this. To-day a Judge will hardly ever fail to follow a well established decision of equal authority with himself. He is bound to follow previous decisions of "superior" Courts, whilst the highest tribunal in the land—the House of Lords—is bound to follow its own earlier decisions. The common law very early became stereotyped, as is natural to any system built on precedent, and the first modification of it was the jurisdiction of the Chancellor. I must first explain how equity, which is the name given to the body of law which the old Courts of Chancery administered, was related to the common law. The Chancellor used to relieve suitors who might be the victims of the rigours of the common law. For example, take the case of trusts. A might give B some property "in trust" for some monastery. The common law would say that B was the owner, as indeed he was, and they would not interfere with the use he made of his property. Equity would, however, force him to use it for the benefit of the object of the trust, not saying "This is not your land at all" (which would contradict the common law Courts), but saying "It's quite true this is your land, but if you don't use it as you have promised I will make you." Equity acted *in personam*, law *in rem*. The Chancellor eventually would even restrain a man by injunction from pursuing a common law remedy contrary to equitable principles. After a time equity became less flexible and subject to the rule of precedent just as the common law had become, and more so. But by this time a new force had come into effect for expanding or modifying both law and equity. I refer, of course, to statute law or Acts of Parliament.

These preliminary remarks of a more or less historical nature are a necessary introduction to my subject. I can now say what is meant by common law.

Law is divided by jurists into *lex scripta* and *lex non scripta*. In English law, statute law—including of course statutory rules and orders as well as Acts of Parliament—form the *lex scripta*. The *lex non scripta* includes both the common law; for example, the Sale of Goods Act and the Larceny Act are simply codifications of the common law, yet they retain their common law origin. What, then, are the distinctive features of the common laws? I do not propose to deal at all with the criminal law, though that had its origin in common law; it is practically all codified now and of no great importance to you. Civil actions at common law have always started by the issuing of a writ from the King. In very early days the Courts became conservative and would only issue writs for which they could find some precedent. Consequently, unless your cause of action happened to come strictly within the precedent of some writ you could not go to law.

THE EXPANSION OF THE COMMON LAW.

But the difficulty was overcome by a very early statute, the Statute of Westminster 2nd, 1275, which ordered the Courts to issue writs where the cause of action was not identical with any precedent, but was *in consimili casu*. This made possible a wonderful expansion of the common law; and actions "on the case," as these actions were called, became very popular and varied. I will give a well known example, which illustrates the distinctions between "trespass" and "trespass in the case." A mischievous boy at Milbourne Port, Dorsetshire, stood outside the market-place, lighted a squib, and threw it at random into the market-place. It alighted, still burning, on the stall of a merchant who sold ginger-bread, and he, fearing for his own safety and the safety of his wares, picked it up and threw it across the market-place; the squib alighted on the stall of another merchant who also sold ginger-bread, and he did the same as the first merchant had done; but when he had hurled the squib across the market-place it struck a man named Smith in the eye and exploded at that very moment and seriously injured him. He brought an action against Shepherd, the mischievous boy who had started the squib on its career, and it was decided that he had chosen the wrong remedy. For an action of trespass the injury must be direct, not merely consequential. But it was admitted on all hands in the case that an action "on the case" must have been successful. "If I throw a bough at you as you pass in the road," said one of the Judges, "that is trespass; but if I leave the bough in the road, and you come at night and trip over it, your remedy is by action on the case." This was one of the ways in which the common law was expanded. There were others, too. Legal fictions have been the means of expansion. Laymen are very apt to make fun of legal fictions, not realising their value in the development of law. One of the earliest actions of law was the action for the recovery of land, but for this very reason the procedure was very technical, very costly and unsatisfactory. A very late action

was one of ejectment, which was comparatively simple and cheap. It was for the protection of people who had been granted leases of land (a very late development of our land system) and were ejected by someone other than the lessor. An excellent example of legal fiction is that which enabled the action of ejectment to be used instead of the action for recovery of land. Some ingenious man (call him A) wanted to make a claim to land occupied by X, so he granted a lease for a day to a man we will call Doe; Doe entered upon the land and was of course turned out by X. Doe then brought an action of ejectment against X, where, of course, the matter in fact decided was the comparative justness of the claims of X or A (the lessor) to the land. The action was entitled: *Doe on the demise of A* v. *X*. This became common practice and eventually Doe, the lease, entry and ouster became pure fictions. Doe was imaginary. No lease was granted to Doe, no entry on the land made, and there was no ouster from the land. But the Courts would not allow the defendant to dispute these preliminaries, and this was for years the regular method for trying an action for the recovery of land, until Parliament at length intervened and the fiction about the imaginary Mr. Doe was left out of the case.

Yet another way in which the common law expanded, and still may expand, is by the incorporation into it of customs. Customs which are universal, reasonable, and not in direct conflict with the law will be recognised and given effect to by the Law Courts. The most notable example of this is the wholesale incorporation of the common law, which was originally purely of feudal origin, of the *lex mercatoria*. This was the custom law of the traders and merchants of the land, which was originally administered in special merchants' Courts at the most important ports, and was founded on the ordinary practices of merchants of all trading countries. The most distinctive feature of this branch of law is the doctrine of negotiability of certain instruments. I shall in this paper from time to time refer to a number of common law maxims to illustrate some of its features; one of these maxims is *Nemo dat quod non habet*—"a man can give no better title than he has got himself." This was of the essence of common law. Thus it is if you buy something which turns out to be stolen you will have to hand it back without any compensation to the original owner, however honestly you may have come by it and although it may have been stolen through his carelessness. In ordinary cases that is still true. A case in the Court of Appeal this year (1925) illustrates the rule and the hardships of it. A man named Kempler, the plaintiff, handed to a man named Ronchi for sale or return with an express condition that the "goods remain my property until charged by me"—a parcel of diamonds. Ronchi straightway took the diamonds and sold them for £688 to a firm called Bravingtons, Limited, who were the defendants, and absconded with the money. Kempler then brought an action against Bravingtons, Limited, for the return of the diamonds or their value, and he succeeded: so that the defendants, who had acted throughout in perfect good faith, lost their £688 and the action. Ronchi could give no better than he himself had.

The merchant law made great inroads upon this doctrine by the principle of negotiability. The whole meaning of a "negotiable" instrument is that if a man receives it in good faith and for value given he has a perfectly good title to it, and a good claim against the acceptor and prior indorsers whatever may have been the history of the instrument. Thus, in the case I have mentioned, if instead of diamonds Ronchi had been dealing in £5 notes the case would have had a different result. A thief can give a perfectly good title to a bill of exchange. The law merchant also effected this common law principle at other points; it introduced the doctrine of "market overt," which may in rare cases be a protection to buyers, and, much more important, it gave rise to the special characteristics of factors and mercantile agents who, as you know from what I said last year, may sometimes give a better title than their own.

I have tried up to this point to show what the common law is, how it has been modified by statute law and equity, and how it has been able to expand by the invention of actions *in consimili casu*, by legal fictions and by incorporating customs.

I now go on to deal with its main division into contract and tort, and say something about each. All actions at common law are either founded on tort or contract, or both. In modern days the distinction is fundamental, but there is not historically the same distinction.

The Origin of Contract.

Contracts under seal were enforceable by an old writ known as Writ of Covenant, and these specialty contracts have consequently, even to this day, remained subject to entirely different rules from a simple contract. The origin of a simple contract becoming legally enforceable is to be found in the development of action for pure torts by way of actions *in consimili casu*. A development of the all important action of trespass gave us the first approach to contract, and in this way: Supposing a smith was entrusted with a horse to be shod, and lamed it; that would be no trespass. The gist of the action of trespass was, and is, that the defendant had "with force and arms and against the peace of our Lord the King, interfered with the plaintiff's possession of his body, land or goods." This was liberally construed, it is true, but there had to be some interference with the plaintiff's body, land or goods by some voluntary act of the defendant. This would not include the shoeing of a horse at the plaintiff's request. But an action on the case was allowed as early as the 14th century against a man who pursued some "common calling" and negligently carried out his task. The plaintiff had to allege that the defendant had "assumed" or taken upon himself to carry out the task with reasonable care, and had not done it. This was the first approach to a simple contract; and it was natural enough that the next step was what was called a "special *assumpsit*"—instead of just alleging the *assumpsit* implicit in a particular trade or profession, the plaintiff was now allowed to plead a "special *assumpsit*" and a "special holding out" or undertaking. Thus something very near to contract was evolved out of trespass. Another action of tort is deceit, and this was of early origin, and in the same way a development of this action resulted in another sort of action for breach of contract, where there was a misrepresentation resulting in damage. The final step was to recognise that a man might suffer as much damage by his neighbour's non-fulfilment of his promise as by his active fraud or deceit or negligence. This development made any breach of an agreement actionable, subject to an important qualification which developed at the same time to which I must now refer.

The common law Judges were, as indeed is natural, not prepared to enforce any casual promise. A solemn act and deed, under seal, they assumed to be intended to be legally binding upon the parties, and this remains the case until the present time.

Consideration.

A contract under seal needs no consideration; but a promise not under seal is only enforced by the Court if there is some consideration for it. The origin of this doctrine of consideration is most obscure. It is often expressed to be founded on the Roman law principle that *ex nudo pacto non oritur actio*. But, of course, the Roman meant by a *nudum pactum* something wholly different from

what an English lawyer means when he thinks of a contract not under seal and without consideration as a *nudum pactum*. However, with the historical origin of consideration you are not much concerned, but a thorough understanding of what consideration means and its effect upon the law of contract is absolutely essential for anyone who wants to know even the rudiments of English law. Putting it as simply as I can, even if perhaps rather loosely, it means this: that where A seeks to enforce a promise made by B, or to obtain damages for its non-fulfilment, A must show that in return for that promise made by B, A himself did some act or paid some money or promised to do some act or pay some money—not necessarily, be it noted, to B. Observe that A's promise or obligation to do some act is just as much "consideration" as is the actual performance of it; and when I say do some act I include, of course, refraining from doing some act which he had a right to do.

Observe, too, that the amount of the consideration will not be inquired into by the Court. It is no defence to an action of contract that the consideration was hopelessly inadequate. The only approaches to the *laesio enormis* principle of Roman law to be found in English law are the creations of statutes—such as the Moneylenders Act, or the Workmen's Compensation Act, where an agreement can be set aside on the ground of the unfairness of the bargain. An excessive price may be very valuable evidence in a sale of goods case, of the representation made by the seller as to the quality of the goods; but, however excessive the price, if the goods are of some value, there is sufficient consideration to support the contract. Absence of consideration is a good defence; inadequacy of consideration is no defence. A very old case illustrates this. In *Thornborow* v. *Whitacre*, the plaintiff had bargained with the defendant thus: the plaintiff would pay £5 down, and the defendant was to give two rye corns on the next Monday, four on Monday week, eight on Monday fortnight, and so on, doubling it every Monday for a year. The Court thought that the contract was a binding one, though under it the defendant had to provide more rye than was grown in a year in all England, and £5, of course, was a ridiculously inadequate consideration. One point about consideration is that past consideration does not suffice. For example, if I sell a horse to X and the bargain is duly completed, and I then "warrant" the horse to be sound, there is no consideration for my promise that it is sound. He cannot say that I made the promise in consideration of his having bought the horse; that would be past consideration (*Roscorla* v. *Thomas*). Consider the well known case of *Lampleigh* v. *Braithwaite* (1616). Braithwaite, having committed a murder, requested Lampleigh to take certain journeys and use all his influence with a view to securing a pardon. This he successfully did, and Braithwaite, as a mark of gratitude, promised to give him £100. He did not pay, and Lampleigh brought an action. The defence was that the promise to pay was made for a past consideration, but it was held that when the request was made by Braithwaite he impliedly promised to pay for the services and expenses rendered at his request, that he would be liable to pay a fair sum in any event (quite apart from his promise to pay £100), but that that promise clearly showed what was in Braithwaite's own view a fair sum to recompense Lampleigh. His liability in fact rose not on his promise to pay, but on a contract implied for the request he made. With this explanation you will see that there is no exception to the rule about past consideration made here, although it is a case frequently quoted as illustrating an exception to the general principle. There is one other class of case, sometimes called an exception. Supposing I owe £5 for goods purchased five years ago and to-day I promise to pay him the £5, and two years later he brings an action against me for my later promise (for which there was no consideration), I could successfully rely on the Statute of Limitations; but my promise is sufficient to prevent the operation of the statute. This is no exception really, though. The consideration for the original obligation remains, and all that the later promise does is to suspend the operation of a statute. The cause of action is still the original contract, and not the new one.

DEFENCES TO ACTIONS ON CONTRACT.

I have said rather much about consideration, but it deserves careful attention as it is a most important feature of English law, and deserves it in this paper as it is a unique invention of English common law and one which has been found very satisfactory as a sound working rule, though perhaps a trifle artificial in very extreme cases. Absence of consideration is only one defence to an action on an agreement. I must mention other defences. There is, of course, the defence that there was no genuine agreement. This may be due to fraud, or innocent misrepresentation, or to a mistake of fact; or merely a complete denial that the agreement was, in fact, concluded between the parties. Then, again, it is a defence that the alleged agreement is impossible, or against public policy. As to "impossible" I need only say this: that it is an exceedingly hard plea to make good, and it is not sufficient for a defendant to prove that the promise was one which he himself could not possibly fulfil; it must be absolutely, not only relatively, impossible. The case which I have just referred to on the question of inadequate consideration illustrates this. Of course, it was impossible for the defendant to supply all the rye he had promised, but it was not absolutely impossible, and so the defence of impossibility failed.

An important class of contracts which are not binding at law are contracts which are for an illegal or immoral consideration, or are against public policy. *Ex turpi causa non oritur actio* is the maxim. An example of illegal consideration is to be found in the case of *Collins* v. *Blantern*, an old case dating from 1767 (2 Wils., 341). This was an action on a promise, but the consideration was the settling of a criminal prosecution, and it was successfully pleaded that this was an illegal consideration. The Lord Chief Justice of the day declared "You shall not stipulate for iniquity. All writers upon our law agree in this—no polluted hand shall touch the pure fountains of justice. You shall not have a right of action when you come into a Court of Justice in this unclean manner! *Procul, O Procul, este profani!*"

The promise in this case was by deed under seal, and you must bear this in mind that while "no consideration" is not a good defence to an action on a promise under seal, it is a good defence in such a case to show that the consideration was illegal, immoral, or contrary to public policy. The contracts against public policy may be regarded as including illegal and immoral contracts, but go far beyond this, and a few examples will be necessary by way of illustration. This class of contract is very flexible. Quite recently there was a case heard in London by Lush (J.), when a worthy colonel brought an action to recover a sum of money which he had paid for a knighthood which did not materialise. The Judge decided that he could not succeed, though he proved the facts, because such a bargain was contrary to public policy. I think there was no precedent of this nature. Contracts in restraint of trade have always, within limits, come within this category, and also afford good illustrations of how the law develops. A reasonable restraint of trade has always been allowed; but until recently it was thought that if the area was unlimited, the contract was necessarily unreasonable and against public policy. The House of Lords decided

otherwise in the important case of *Nordenfelt* v. *Maxim-Nordenfelt Guns and Ammunition Company*. In that case the company bought out the interests of the inventor and first manufacturer of maxim guns, and the contract included a stipulation that he should not continue the manufacture or sale of maxims anywhere at all. This, it was argued, was an unlimited restraint of trade and against public policy, but it was held that the true test, whether the restraint is general or partial, is whether it is or is not reasonable, and that such a covenant may be unlimited in point of space provided that it is not more than is reasonably necessary for the protection of the covenantee and is in no way injurious to the public. The Lord Chancellor, Lord Herschall, and Lord MacNaghten, one of the greatest of the common law Judges, explained in their judgments that the earlier cases had to be reviewed by reason of the altered conditions of commerce and of the means of communication. Contracts in restraint of marriage are subject to similar rules. In *Lowe* v. *Peers* ((1768) 4 Burr, 2225) the defendant executed a document to this effect: "I promise Mrs. Lowe that I will not marry with any person besides herself; if I do, I agree to pay her £1,000 within three months." Shortly afterwards he married someone else, and she brought an action for the £1,000, and failed, because, according to the views of the Judges, his was not a promise to marry Mrs. Lowe, but a promise not to marry anyone else; so that if she refused to marry him he would be compelled to be a bachelor all his days. But partial restraint of marriage is permissible; for example, conditions against marrying before 21, or marrying a particular person, or a Roman Catholic, or a domestic servant, or a man below her in social position, or a Scotsman, have all been upheld. The last example of a contract unenforceable as being against public policy that I shall give you is the case of *Cowan* v. *Milbourne* (1867). The plaintiff was the secretary of the Liverpool Secular Society, and the defendant the proprietor of some assembly rooms in that city. The rooms were engaged for a series of lectures to show that the teaching of the Bible was erroneous, and that the Bible was no more inspired than any other book.

The defendant eventually declined to allow the rooms to be used, and the plaintiff sued him, but unsuccessfully, as the use to which the rooms were to be put was illegal and contrary to public policy. "Christianity," said Chief Baron Kelly, "is part and parcel of the law of the land." This case would almost certainly be decided otherwise now. Lord Coleridge (C.J.), summing up to the jury on an indictment for blasphemy in 1883 (*Reg.* v. *Ramsay and Foote*), declared "It is no longer true in the sense in which it was true when those *dicta* were uttered, that Christianity is part of the law of the land. . . . . To maintain otherwise is to forget that law grows, and that though the principles of law remain unchanged, yet (and it is one of the advantages of the common law) their application is to be changed with the changing circumstances of the times. Some persons may call this retrogression, but I call it progression of human opinion."

This statement of Lord Coleridge has since been frequently acted upon. Before leaving the subject of contracts which infringe public policy, I should just mention wagering contracts, but inasmuch as the non-enforcement of this class of contract is entirely due to statute and not a creation of the common law, I shall not go into the very intricate points involved. One may perhaps regard the well known rule *de minimis non curat lex* as being connected with the question of public policy; it implies that contracts about trivialities will not be inquired into in a Court of law. Thus, if you invite a friend to dinner (and kill a fatted calf) and he fails to turn up, the Court would not allow you to bring an action for damages against him. There is one more category of contracts which are non-enforceable at common law; all these I have mentioned so far depend upon the nature of the contract itself. The parties to it may render it non-enforceable. An infant cannot make a contract at all. If "necessaries" are in fact supplied to an infant upon his order, he may be sued—not for the agreed price—but for a reasonable price, *quasi ex contracti*, and some contract which the Court considers to be for the infant's benefit may be enforced against him.

Lunatics and drunkards are subject to special rules, but I have not time to embark upon a discussion of what jurists term "The Law of Persons." Similarly, I have had to omit any reference to the important subject of the formation of a contract—offer and acceptance—and also the technical rules of evidence which may very materially affect the position of the parties to a contract. Thus far my remarks about contract have been rigorously confined to the common law, but in case I should mislead you I must point out that the legislature has interfered with the liberty to contract and the power to enforce contracts very considerably. In very modern days, in fact, freedom to contract (once a cardinal principle of the British Constitution) has been very gravely curtailed.

"FREEDOM OF CONTRACT."

As a politician I must confess that I think these interferences and restrictions are beneficial—as a practising lawyer, I certainly owe much to them—but as a humble student of jurisprudence I am rather perturbed. The Rent Restrictions Acts, the Workmen's Compensation Act, the Minimum Wage Act, the Moneylenders' Acts, are some glaring examples of what I mean. Take the Workmen's Compensation Act. Suppose I am a workman and am accidentally injured, and am receiving 30s. a week compensation. I enter into perfectly *bonâ fide* agreement with my employers to settle for a lump sum and sign such a contract. The Registrar of the County Court can step in and have the agreement set aside just because he thinks that the consideration (*i.e.*, the lump sum) is "inadequate."

The Rent Restrictions Acts provides a very obvious example of the same thing. I may go to a house and quite freely and willingly agree to pay 20s. a week for it, and pay for six months. Then by some accident discover that the "standard rent" is only 10s., and thereafter live rent free for 6 months and then only pay 10s. a week and refuse to quit. You cannot "contract out" of the Rent Acts or Workmen's Compensation Acts.

But apart from this modern tendency to protect people from harsh contracts to which they are willing parties, there has been considerable interference with the unfettered liberty to contract. Innkeepers and railway companies and other carriers have been subject to intricate and highly technical rules; thus, if you send by train a package worth more than £10 and containing any of the following articles:—gold or silver, precious stones, jewellery, watches, clocks or timepieces, trinkets, bills, bank notes, money orders, stamps, maps, writings, title-deeds, paintings, pictures, glass, china, silks, furs or lace, without declaring the contents, and paying an extra insurance fee, you cannot recover if they are damaged or lost even through the railway company's negligence. Yet if the articles happen not to come within that curiously illogical category you would recover, even if they were lost or damaged through pure accident, and I can assure you that the litigation to determine what are "paintings," "furs," "timepieces," has enriched many a lawyer.

Even more has this been the effect of the Statute of Frauds (1678). This Act, designed as protection against fraud, has enabled frauds innumerable to be successfully penetrated.

The Act declares that certain contracts shall not be enforceable at law unless there is a note or memorandum of the contract in writing, signed by the party to be charged. These contracts include:—

(1) Leases for more than three years.
(2) A promise to answer for the debt, default, or miscarriage of another.
(3) Contract not to be performed within a year.
(4) Interests in or concerning land.
(5) Contracts for the sale of goods of the value of £10 or upwards.

Innumerable cases exist upon the interpretation of the exceedingly vague words of the statute; I will just mention one which illustrates the hardships which it has caused. In *Lee* v. *Griffin* (1861) the plaintiff was a dentist and he had made a set of artificial teeth for the defendant for the agreed price of £21. When at great expense they were completed the defendant declined to accept them. They were useless for anyone else, and the dentist brought an action for breach of contract. It was decided that the contract was one of "Sale of Goods," and there was no memorandum in writing of the contract, and so the dentist failed.

Time prevents me from saying anything more about contracts, though there is a great deal I have left unsaid. I must say something about the other great section of the common law, namely the law of torts.

THE LAW OF TORTS.

A tort is a wrong, independent of contract, for which a civil action for damages will lie. The fact that torts are merely a collection of various particular wrongs which have from time to time been recognised in our Courts makes it almost impossible to give any very logical account or more satisfactory definition of a tort than that it is a "wrong" "independent of contract" for which a civil action for damages will lie.

It may be coincident, in a particular case, with a crime. For instance, if I am killed by a motor-car driven by X with absolute and abandoned recklessness, that is a tort, while X, by the very same acts as rendered him liable to the action for damages, would have committed the felony known as manslaughter. It is therefore wrong to call a tort a wrong "other than a crime," as it has been defined. There is a technical rule of the common law that when the facts constituting the tort amount to a felony you cannot take an action for damages until you have prosecuted for felony, a rule designed to make a wronged individual put his duty to the community before his own private redress. The ancient rule has recently been reaffirmed in the case of *Smith* v. *Selwyn*. We must constantly bear in mind an important distinction between torts which are actionable in themselves and those which are only actionable by reason of resultant damage.

"INJURIA SINE DAMNO."

The Latin phrase *injuria sine damno* explains what I mean by the former class—"legal wrong resulting in no actual damage." Trespass is such a wrong; so is assault and battery; so is libel; so are a few particular classes of slander; so are conversion and detinue. For in all these cases the mere wrongful act gives rise to the action for damages; the damages may only be nominal, but the legal right to recover some damages, however small, arises at once. The old case of *Ashby* v. *White* is an apt illustration. In that case a voter at an election was wrongfully refused the right to vote by the returning officer. It transpired by the evidence that the candidate for whom Ashby intended to vote was elected by a large majority, and it was contended that his action must fail because the refusal, though wrongful, had done him no harm. But the Judges decided that he had a legal right to vote, and that *ubi jus, ibi remedium* (where there is a legal right there is a remedy if it is broken).

But it would be a great mistake to suppose that this is a rule of universal application unless we place a very strict interpretation on the word "jus." Supposing someone were to slander me, let us say; were to state that I was five years in arrears with my subscription to my golf club. I could not go to the Court and say "this man has taken away my character unjustly," as I could do if the words were written and the action was for libel. My case would at once be struck out, merely for the reason that to succeed in such a case of slander I needs must prove some specific damage caused by the slander. There are indeed some classes of slander in which, as I have indicated, specific damage need not be alleged or proved; these are at common law slanders which are defamatory of a person of and concerning his trade, profession or business—in a rather narrow sense—which impute a crime punishable with imprisonment without the option of a fine, or which falsely state that the plaintiff is suffering from certain malignant diseases. There has been added another class by the Slander of Women Act. But except in these few cases damage must be proved.

So it is with such torts as deceit, negligence, and nuisance. You cannot take an action against a man because he drives his car furiously, even if to your own inconvenience; if you hop out of the way with difficulty and avoid being knocked down, and suffer no actual damage, you cannot bring an action. But supposing the defendant had aimed his fist instead of his car apparently to deal you a blow, you would be entitled to bring your action although you avoided the blow with a skilful hop, even although he thought better of it and stayed his hand, because no damage is necessary to give rise to an action of assault, and it is, of course, just as much an assault to aim a blow as to strike one. So much for the meaning of *injuria sine damno*.

"DAMNUM SINE INJURIA."

I must say something about the inverted *damnum sine injuria*—where actual loss is caused but no legal wrong is committed or no legal right informed. Here, unfortunately, one can definitely state that no action will ever lie in such a case, and this although the loss is caused wilfully and maliciously. Always remember that it is not every loss that gives rise to an action for damages, but only where the loss is occasioned by the infringement of a definite legal right. And remember, too, that malice in itself is not actionable, of course. There are (as I shall later explain) certain torts which are only actionable where there is malice, and I do not overlook this fact.

The *Gloucester School* case is a very early example of the general principle. A schoolmaster at Gloucester had a very successful school until there came another and set up a school immediately opposite, with the result that all the boys left the old school and went to the new. The original master had sustained an undoubted loss, but had suffered no legal injury.

The Mayor of Bradford v. *Pickles* is the leading case which carries us to the next step, namely, to the principle that the motive cannot make illegal an action legal in itself. Pickles was the owner of some land near the new water works of the Bradford Corporation, and in order to compel them to buy him out at his own price (they had no compulsory powers) he dug tunnels on his land to prevent water percolating to the corporation's reservoir, and he did so very effectively. The corporation sought damages and an

injunction against him, but it was held that he was entitled to do what he did and his motive was immaterial. Halsbury (L.C.) stated: "It comes to an allegation that the defendant did maliciously something he had a right to do. This is not a case in which the state of mind of the person doing the act can effect the right to do it. If it was an unlawful act, however good his motives might have been, he would have no right to do it. If it was a lawful act, however ill the motive might be, he had a right to do it. Motives and intentions in such a question as is now before your Lordships seems to me to be absolutely irrelevant." You will have noticed that the Lord Chancellor qualifies his statement by the phrase "in such a question as is now before you," and he does so because there are some cases in which the motive does make all the difference. The basis of civil liability in English law is that liability is created *aut dolo aut culpa*—either by wilful wrongdoing, or by carelessness. This (with one very important class of exceptions) is very fairly accurate, but only so long as one remembers the cardinal principle of the common law that every man is presumed to intend the natural and probable consequences of his act. It is this presumption which makes the motive as a rule immaterial. Thus in trespass, defamation (subject to an exception), false imprisonment and assault, a man is presumed to intend the natural and probable consequences of his acts, and no "malice" need be proved; nor will the absence of "malice" be any defence. "However good his motives might be," as Lord Halsbury declared, "he would have no right to do it." Take the case of defamation, which affords an excellent illustration. Supposing I write a letter stating that "X is a thief," I cannot defend myself by saying "I had no malice; my sole concern was to protect an innocent man Y from a false charge," or even that X was a purely fictitious person in my mind, if others reasonably thought I referred to him. The actual and probable result of my action is to "hold X up to hatred, ridicule and contempt," and the law presumes that that is my intention. But as I have said, there are some actions the very gist of which is malice. To keep to defamation, I expect you all know that qualified privilege rebuts the presumption of malice; that is to say, if the occasion is privileged, the law assumes that there was no "malice" in the libel. Thus, if I employ a servant, and A writes to ask me for his character, and I say "I am afraid X is a thief"—these circumstances are sufficient to raise privilege, and the presumption that I intended to do wrong to X no longer remains. Privilege amounts to no more than that; the result of it is that express malice must be proved if the plaintiff is to succeed. If proved, malice destroys privilege. In the case I have instanced, the common law has for very good reasons built up this doctrine of privilege to protect a person who is asked an honest opinion and is under a moral obligation to supply it. If he gives an honest opinion he is protected, albeit he is mistaken; but if he uses the opportunity to spitefully pay off a grudge against someone he dislikes, he is not protected. Thus it is that malice becomes the very gist of an action for libel when the occasion is privileged.

Nor is this confined to libel actions. A notable further example is that of malicious prosecution. Here again the law protects a man who sets the criminal law in motion if he honestly thinks the circumstances justify it, however erroneous his view may have been; but the privilege is not extended to protect a man who deliberately abuses the machinery of the criminal law to injure someone against whom he has a grudge. It is otherwise with false imprisonment or wrongful arrest. There is yet another class of case which I must mention in this connection. They are cases of "conspiracy." In the early part of this century there was a great deal of confusion even in the highest Courts in the land about these cases. They are cases where men combine to act in such a way as to injure the trade of another. Of course, if the injury to the other's trade is in itself wrongful and tortious, the conspirators are undoubtedly liable to an action; or if they conspire to induce others to break their contract. In this way the South Wales Miners' Federation was held liable for damages for inducing miners to break their contract. This case went to the House of Lords in 1905, and, of course, you are all aware of the changes which have been made in consequence of that and other cases by the Act of 1906 to protect trade unions from liability in such an event. But if the means of injury to the other's trade are legitimate, what of the conspiracy then? It is now well settled that the liability in such a case depends upon the motives of the conspirators. Thus in *Mogul* v. *McGregor* ((1892) A.C.), there was a commercial conspiracy in this way. The defendant firms were traders between China and Europe, and with a view of obtaining for themselves a monopoly of the homeward tea trade formed themselves into an association and gave a rebate of 5 per cent. of the freight on any goods to any merchant or shipper who shipped their tea exclusively in the association's vessels. The plaintiffs were a rival firm of traders between Europe and China and were not allowed to join the association, the avowed object of which was to drive the plaintiffs out of the competition. It was decided that as the dominating motive of the defendants was to keep the trade in their own hands and not to ruin the plaintiffs, and as there was no personal malice or ill-will towards them, the defendants were not liable. Two cases decided in 1898 and 1901 by the House of Lords on the same subject are of great importance. *Allen* v. *Flood* was only decided after being twice argued before the House of Lords, and after the second argument their Lordships sought the advice of all the Judges of the High Court. Eventually by six to three the House decided that the plaintiffs could not succeed. The defendant (a trade union official) had induced their employer to dismiss the plaintiffs, stating that if he did not the men would go on strike. *Quinn* v. *Leathem*, the other case in 1901, was similar, except that there was the element of conspiracy. *Allen* v. *Flood* was so decided because Flood had a right to do what he did and (on the authority of *The Mayor of Bradford* v. *Pickles*) his malicious motive (for he intended to injure the plaintiffs) was declared to be immaterial. In *Quinn* v. *Leathem* it was decided that a conspiracy to do malicious injury is actionable, this case being distinguished from the *Mogul* case by reason of the fact that the main object of the conspirators in *Quinn* v. *Leathem* was to do injury to the plaintiff with whom they had had a dispute, and not to protect the defendant's own interests; and from *Allen* v. *Flood* on the ground that it may be wrong for many to conspire to do an act which would not be wrongful if done by one person. I think I have said enough now to give some idea of the meaning of *dolo* in the phrase *aut dolo aut culpa*. As a rule wilfulness is presumed from the commission of an unlawful act, but in certain cases a more definite express malice with a meaning more akin to its popular sense must be proved to establish liability. In most cases when we use the word "malice" or "maliciously" we only mean that a man has consciously committed an act which is (whether he knows it or not) unlawful.

NEGLIGENCE.

I must say a few words about *culpa*. "Negligence" gives rise to liability in numerous and varied ways, and it is very important that its scope and limitations should be appreciated. Negligence giving rise to liability is the breach of a duty owed to another to take proper care, and "proper care" is the care which a reasonable man would exercise. We sometimes

say that negligence is doing an act which a reasonable man would not do, or omitting to do an act which a reasonable man would do; and it is essentially the function of a jury to decide what amounts to negligence. But we must not forget that there must be a breach of duty, either a statutory duty or a common law duty, and of a duty owed to the plaintiff. The most familiar case of negligence is unskilful driving of a vehicle on the public highway. Here everyone who takes upon himself to drive on the public highway owes a duty to others upon it or near it to take due care. Inasmuch as a reasonable man would not risk driving a car on the public streets unless he was a competent chauffeur, he is expected to use the skill and care which might be expected from a competent chauffeur. The same rule applies to doctors or solicitors, or, I suppose, accountants and auditors. It is not good enough for them to act as a prudent layman would act, but as they hold themselves out as skilled in their profession they are expected to possess the skill and use the care which is to be expected from members of their profession.

In one sense there is always the same standard of care—that of the reasonable man—but what is expected of the reasonable man depends very much on what he holds himself out to be. The same result is arrived at by looking at the matter from the point of view of the duty owed. A chauffeur owes a duty to drive competently; a surgeon to operate competently; and a solicitor to advise competently. In each case the breach of the particular duty is negligence. Roman law used to make all manner of intriguing distinctions between slight negligence, mere negligence and gross negligence; no such distinction (fortunately) is recognised at all so far as civil liability is concerned in English law. If a person is negligent at all when he owes a duty to take care, he is liable for any breach of the duty, however slight and however gross; and, whichever it is, the liability is the same—to make good the damage caused by the want of the due degree of care. A man may drive a car ever so recklessly and wantonly and by luck hit down a drunken man too drunk to suffer any appreciable injury—perhaps he may have to supply him with a new suit of clothes; but another may drive carefully and slowly up to a point, but in an emergency commit an error of judgment and just scrape some pedestrian with a weak heart or head and very likely have to pay enormous damages. The degree of negligence is in civil actions immaterial. "Gross negligence" has been aptly described by one of Englands greatest Judges as "negligence" with the addition of a vituperative epithet.

In considering negligence it is especially important to keep uppermost in one's mind the duty owed, when considering the question of liability or negligence in permitting one's premises to be in a dangerous state. Let me repeat once more, that in every case the standard of negligence remains the same, but the duty owed to different classes of people differs. To a mere trespasser a man owes no duty to take care at all; he may be liable if he sets a bull or a spring gun to injure trespassers, but for mere negligence he is not liable at all. *Murley* v. *Grove* illustrates the point. The defendant had dug a trench across a private road, and he left it without any lights; the defendant after dark drove his horses and carriage along the road (where he had no right to be) and was wrecked at the trench. It was held that the plaintiff could not recover any damages, there being no duty on the defendant to protect anyone using the road without permission, or right.

The next class of persons coming on to property are those we call licensees. A licensee is one who is permitted to come on to the premises, as opposed to trespassers who come without permission, and invitees who come on lawful business. An invited guest is not an invitee in the legal sense, but a bare licensee. There is no general duty to use reasonable care to protect a licensee. The rule is well established that the only duty an occupier owes to a licensee is to warn him of any latent danger or hidden trap which the occupier knows to exist but the licensee knows not of. In one case, by way of example (*Southcote* v. *Stanley*), a gentleman who had been to dine at his friend's house was just about to leave when a pane of glass fell from the door and hit him in the face and cut him severely. It was held that this was not a "hidden trap" or a "latent danger known to the occupier," and that therefore the plaintiff could not recover damages. With invitees, as I have indicated, there is an absolute duty to keep the premises in a reasonably secure condition. An invitee is a person who is upon premises by the invitation or permission of the occupier on lawful business, in which he and the occupier have an interest. The most obvious example is where a would-be purchaser visits a shop, opened to the public, or a would-be passenger visits a railway station either to travel, or to inquire about the trains. It has even been held that someone who goes to the station to "see off" a passenger is an invitee upon the station on lawful business. Similarly a window-cleaner, an electrical engineer, or even an inspector of a meter for the gas company, visiting one's house, is an invitee. I am refraining so far as possible from dealing in this paper with rules of evidence, but in the case of negligence, there is a very important rule of evidence which I cannot omit to mention. It may have occurred to you that it is very difficult to prove affirmatively negligence on the defendant's part, and yet of course that is the gist of the plaintiff's case. For example, if you are walking under a bridge and a brick falls out from the brick-work and hits you on the head, how are you to prove negligence? That is what happened in *Kearney* v. *L.B.& S.C. Railway Company*, and it was there laid down, as in many similar cases, that where something happens which in the ordinary course of events would not happen if the defendant had exercised due care *res ipsa loquitur*, the mere happening of the event bespeaks negligence; the event itself is sufficient *primâ facie* proof of negligence.

Before leaving negligence I must say one word more, and that is this. In many cases negligence which gives a right of action for tort is itself a breach of contract. Indeed, it was from this fact that any idea of contract was developed. This is the case in every accident to a passenger with a ticket, on a railway, for example, where the accident is caused by negligence. The company have broken their contract by failing to "carry safely," but they have also committed a "wrong independent of contract" just as when a motorist negligently runs down a man in the street, or a porter with a truck runs down a man on the station before he has taken a ticket, *i.e.*, before there is any contract. And there are two points to be noticed; first this, that, if there is a contract, in any such case, with express conditions as to negligence, the defendant is entitled to the benefit of those conditions even though the action be framed in tort. A railway company might issue to me a free or a cheap ticket on the express condition that I shall not hold the company liable for negligence. If I am injured through the company's negligence I cannot say "true, I can't sue you upon the contract because of the conditions, but I will sue you in tort instead." They can defend themselves by saying that my journey was the subject of a contract absolving them from liability. The second point is this: that if there is no contract at all, there may still be the remedy in tort. Thus, an infant in arms (who is carried free) may maintain an action for negligence; so may a man who travels without a ticket, if he intended to purchase one at the other end or on the train—if, in fact, he was not "a trespasser." The fact that negligence in the performance of a contract may give rise to wider liability than mere breach of contract involves

may be very important in cases of quite another sort. I refer to contracts for the sale of goods which are injurious through want of proper care. For example, if I buy a penny bun and it contains a stone; if I eat it, and suffer as a consequence, I can have damages for breach of the warranty implied in the contract of sale, that the bun is fit for the purpose for which it is sold. But if I give it to a friend, he has no contractual remedy against anyone—there is no privity of contract between himself and the confectioner; it would be quite impossible to frame a contractual action in such circumstances. But he may still have a remedy against the bun-maker for negligence, as a tort, as a bun-maker owes a duty to anyone who eats his buns (quite apart from contract) to take reasonable care in its manufacture to render it innocuous. Thus actions in tort have been maintained where mineral water bottles have exploded, hot water bottles burst, defective guns exploded, and various kinds of food proved deleterious.

RYLANDS *v.* FLETCHER.

I have now dealt as fully as time permits with the two branches of the phrase *aut dolo aut culpa*, which is the basis of civil liabilities. But as I have indicated, there is an important exception to this: there is a class of case in which the defendant is liable although he has been ever so careful and although he has done no unlawful act. It is based on the maxim *sic utere tuo, ut alium non laedes*—a cardinal principle of the common law. The leading case to illustrate the principle that you may only do what you like with what is yours, so long as you don't hurt another, is *Rylands* v. *Fletcher*. The principle laid down there is this: that if a man brings on to his land or his property something that would not naturally be there, in such a way that if the thing should escape his neighbours will suffer, he does it at the risk of having to compensate them if it does escape; and this applies even if there be no negligence at all. I hope you realise the importance of this case. You see there is no unlawful act, any more than in the case of *The Mayor of Bradford* v. *Pickles*; and, *ex* hypothes, any question of negligence is negatived; there is neither *dolus* nor *culpa*. In *Rylands* v. *Fletcher* the facts are rather like *Pickles'* case (which I hope you will bear in mind), but with an essential difference. The defendant had, instead of digging a tunnel, made on his land a reservoir; and after many years the water forced its way through some old disused mineworkings. It was decided on the facts that there was no negligence; and of course there was nothing wrongful in the conduct or the actions of the defendant. Yet he was held liable for the damages caused by the escape of water. The difference with *Pickles'* case is that here the defendant brought on to his land a foreign unnatural thing which was very dangerous unless it was kept within its bounds. Pickles had made a lawful use of his land and damaged (as his object was) the undertaking of his neighbours, but he had brought no unnatural thing on to his land, and was therefore not liable. Water is only one dangerous thing that may be brought on to the land; fire is another; and at common law the liability was the same, if it escaped through no fault of anyone, yet the occupier became liable to make good any damage it might cause. This has now been somewhat modified by an Act of Parliament which has proved extremely difficult to construe. Wild beasts come in the same category, and the man who takes upon himself the keeping of them renders himself liable for any damage they do, even if they escape through no negligence of his. There is, in fact, a special and absolute liability for dangerous things which goes far beyond the general rule of liability which only arises where there is *dolus* or *culpa*—no defence short of an act of God, or the deliberate wilful wrong of a third party is available, except in cases where there is imposed by statute an obligation on the defendant to keep the dangerous thing on his land.

CONCLUSION.

I think I have given you as complete a summary of the principles underlying the law of torts as time will permit. Many very important matters have been left untouched, and in the whole paper I have only dealt with very general principles, and avoided any detailed account of the various subjects I have touched upon. I have purposely avoided a close adherence to the strictest verbal accuracy on occasions, hoping to illustrate better the truth of principles by avoiding an excess of explanatory details which would only serve to obscure the fundamentals. I hope perhaps some of you will have a more complete idea of the common law of England as a separate and distinct entity. No Act of Parliament embodies any of the principles and rules I have dealt with; they are not to be found in any code; they are the outcome of experience, and have been built up by generations of common law Judges who have by some strange chance evolved a very complete and very wise body of laws. The common law approaches, as nearly as one can conceive any system of law doing, to common sense. It is a thousand times more flexible and adaptable than statute law could ever be. The irritating perplexities which laymen find in English law are nearly all the creation of their own lay representatives at Westminster. General principles, wisely applied, are more likely to result in fair common sense justice, than pages and pages of statutes, altered and amended at random in a huge debating society, with the inevitable result that every word is a potential cause for litigation. Don't be easily misled into believing that the remedy for all our forensic difficulties is to add masses and masses of complicated and illogical Acts of Parliament to the Statute Book, and to scrap the common law, which has proved so wonderfully effective for so many centuries in this and other lands.

Institute of Accountants in South Australia

(INCORPORATED).

Annual Report.

The roll of membership as on December 31st, 1925, contained the names of 125 members, viz, 35 Fellows and 90 Associates.

The usual examinations were held during April and October. Unfortunately none of the candidates were successful in April, but five out of eight were able to satisfy the examiners in October.

CITY AUDIT.

Mr. J. A. C. Whiting was re-elected for two years.

ABSORPTION BY THE AUSTRALASIAN CORPORATION OF PUBLIC ACCOUNTANTS.

As referred to in last year's report, Mr. F. N. Yarwood visited Adelaide and addressed members on August 17th. The matter of absorption was approved by the meeting, and at a further meeting held on November 26th, the agreement of absorption was confirmed. It has since been executed on behalf of the Institute.

The thanks of the Council are again accorded to those members who were good enough to give their services as supervisors at the October examinations.

Correspondence.

COMMERCIAL GOODWILL.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—I am disappointed to find that my letter published in your March issue leaves Mr. Robert Ashworth—as he says—more than ever certain that goodwill (*i.e.*, the price paid for goodwill) does not represent a purchase of super profits.

Mr. Ashworth asks certain questions, which I will endeavour to answer:—

1.—(*a*) The exchangeable value of any asset—other than goodwill—purchased for business use would be considered by the purchaser in the light of the capacity of such asset to earn, on the capital outlay, a future normal rate of profit—which in the case of industry may be 10 per cent. per annum, or more or less.

(*b*) Money invested in gilt-edged securities earns a lower rate than the normal profit earned on capital subject to the risks of industry.

2.—The present exchangeable value of already done pioneering work depends upon the amount and duration of future annual super profits expected to arise as a result of such work. The work may thus in some cases have an exchangeable value, and it may in others have no exchangeable value.

3.—The basis of valuation of goodwill is fully discussed in the chapter on The Value of Goodwill contained in my work "Commercial Goodwill." The exchangeable value depends always on estimates of future probabilities. It does not depend upon the past, except to the extent that past events may be taken as a guide in estimating future probabilities. Having estimated the probable annual amount, and duration, of future super profits in any particular case, it is necessary next to consider the difference between the value of the right to receive an annuity over a number of years and the sum of the future yearly amounts of that annuity.

4.—The purchaser of goodwill, in the case of a business having a history of past losses, must obviously be of the opinion that, by buying the connection, he will be able to earn future annual super profits which otherwise he would not be able to earn.

In reply to your correspondent A. B., it seems to me that in estimating the exchangeable value of goodwill future income tax at the estimated standard rate should always be taken into account. Small incomes pay much less than the standard rate, and large incomes pay much more than the standard rate. Investors comprise both classes. Suppose the average standard rate of income tax over the next twenty years is estimated at 3s. in the £, and among the bidders for the purchase of goodwill are a man with a small income liable to an average rate of tax of 1s. 6d. in the £ and a man with a large income liable to an average rate of tax—including super tax—of 4s. 6d. in the £. I do not think that the man with the small income would be likely to offer a larger price for the goodwill, because owing to his individual circumstances he might be liable for a less average rate of income tax, nor that the man with a large income would be able to purchase the goodwill for less than a price adjusted by reference to the probable future average standard rate of income tax.

Yours faithfully,

P. D. LEAKE,
F.C.A.

25, Abchurch Lane, London, E.C.4.

ESTIMATED PROFITS.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—I beg to invite your valued opinion on the following point of professional interest:—

A public limited company is in need of further finance for developments and increasing the earning resources of the company.

On the basis and experience of past years' working, the managing director of the company prepares an estimated profit and loss account showing the yearly anticipated earnings of the company after the scheme for further capital, that he proposes to the shareholders, is given effect to.

All the materials, information, and explanations on which the figures in the above statement are based, are placed before the auditor of the company with a request to certify the correctness thereof.

The auditor satisfies himself as to the correctness of the figures with all the available data put before him, and criticises certain figures where necessary. He then certifies the statement of estimated profit in some such form:

"Subject to the information and explanations given to me and data furnished, the statement of estimated profits appear to be fair, provided that in future years no unanticipated expenses in shape of heavy repairs, renewals, breakage, or total stoppage which may necessitate payment of compensation, or any other unforeseen contingency takes place."

Would such a qualified certificate by a member of the Society be in order, or would it expose him to any disciplinary action?

Yours, &c.,

India. A PRACTISING ACCOUNTANT.

[*It is the duty of the auditor to make an investigation and give a certificate setting forth the exact facts. Statements of "estimated profits" or "anticipated earnings" should not in our opinion be signed by Incorporated Accountants under any circumstances.*—EDS. *I.A.J.*]

NATIONALISING THE ACCOUNTANCY PROFESSION.

With reference to a Professional Note in our April issue, Mr. W. T. Layton, Editor of the *Economist*, calls attention to the following letter which he addressed to the *Yorkshire Observer*.

SIR,—My attention has been called to a report of a speech I made at Dewsbury on the question of publicity and the reform of the Company Laws. Your report is necessarily a very summarised version of a series of somewhat technical proposals which will be available for those interested in a report shortly to be published, but I should be glad if you would give me space to correct two misrepresentations.

I did not advocate, as your report suggests, that the accountancy profession should be nationalised. I said that this proposal had been put forward, but that I did not support so sweeping a suggestion. What I proposed was that in certain cases of very large concerns of a monopolistic or semi-monopolistic character the annual accounts should be audited by a public auditor.

Secondly, I did not suggest that there should be a standardised form of accounts for companies of all kinds. My comment on this point was that the use of standardised forms of accounts suitable for particular classes of industry would grow either on a voluntary basis or in certain cases (such as specific types of public utility undertakings) by statutory regulation.

W. T. LAYTON.

The *Economist*, 3, Arundel Street, London, W.C. 2.

District Society of Incorporated Accountants.

BELFAST.

Annual Report.

Your Committee have pleasure in presenting the report on the work of the Society for the year ended March 31st, 1926.

LECTURES.

During the year the following lectures were given:

1925.
Oct. 5th. "Cost Accounts," by Mr. D. T. Boyd, B.Sc. (Com.), A.S.A.A.
Nov. 4th. "Negotiable Instruments," by Mr. J. M. Hamill, LL.B.
1926.
Feb. 12th. "Industrial and Business Amalgamations," by Professor F. T. Lloyd-Dodd, M.A., D.Sc.

GOLF COMPETITION.

The annual competition for the "Booth" Cup was held in Bangor on May 25th, 1925. Fifteen members participated, and a very enjoyable day was spent. The winner of the cup and replica, presented by the President, was Mr. A. McAdam, Mr. J. Winnington winning the running-up prize presented by the Vice-President. In the afternoon a consolation stroke was held, Mr. A. H. Oughton winning the prize presented by Mr. R. Bell. On September 21st the President, Mr. G. H. McCullough, kindly entertained the members to a day's golf at the Malone Golf Club, and a large number of members availed themselves of the President's hospitality. An eighteen hole stroke competition was held, the winner being Mr. W. C. Watson, and the runner-up Mr. H. Andison.

ANNUAL DINNER.

The annual dinner was held on February 23rd, 1926. The guests included Mr. George B. Hanna, M.P., Parliamentary Secretary to the Ministry of Home Affairs; Professor Earls, Principal of the Municipal College of Technology; Professor Lloyd-Dodd; Mr. Thomas Keens, F.S.A.A., Vice-President of the Society (London); Mr. S. H. Jackson, F.C.A., President of the Belfast Society of Chartered Accountants; Mr. A. H. Walkey, Member of Council; and Mr. Edwin D. Hill, Past President of the Institute of Bankers.

MEMBERSHIP.

The total number of members is 87, consisting of 12 Fellows, 37 Associates, and 38 student members, as compared with a total membership of 83 last year.

EXAMINATIONS.

The examinations of the Parent Body were held in May and November in the Y.M.C.A. Club Room. Twenty-eight candidates entered for the May examination and fifteen in November, sixteen candidates being successful in May and nine in November.

The following were successful in the Final examinations:—Mr. S. D. Crossey. Mr. F. L. Johnston, Mr. W. Keith, Mr. J. Love, Mr. O. J. Belton, Mr. George Hulatt, and Mr. J. D. Radcliffe. At the annual meeting certificates will be presented to the successful candidates at the Final examination held last November.

COMMITTEE.

In accordance with the rules all members of the Committee retire, but are eligible for re-election.

Seven Committee meetings were held during the year.

Mr. J. H. Allen and Mr. J. S. White, the Society's representatives on the Local Unemployment Committee of the Ministry of Labour, attended many meetings of this committee during the year, and Mr. E. A. Anderson and Mr. A. S. Courtney have been appointed additional representatives on this committee. The President, Mr. G. H. McCullough represented the Society at the meeting of delegates from the District Societies held in London.

Some Practical Notes on Deeds of Arrangement.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London by

MR. D. MAHONY,
INCORPORATED ACCOUNTANT.

The chair was occupied by Sir HAROLD MOORE, F.C.A.

Mr. MAHONY said: I am not going to trouble you this evening with deeds of inspectorship or letters of licence, both of which are very rarely met with in practice, and we will therefore confine our attention to deeds of assignment and deeds of composition.

DEEDS OF ASSIGNMENT.

Preliminary Considerations.—We will assume that some unlucky debtor consults you as to his affairs. The first thing will be for you to consider whether or not he can find enough money to pay your fee for the consultation. Assuming that you are satisfied as to this, you proceed to investigate the state of his affairs. He will no doubt tell you that he has a very fine business which is temporarily short of cash, and he may even ask you to lend him the wherewithal to carry on or to use your influence to procure him a loan. Insolvent debtors as a rule are very optimistic as to what they could do if they only had the money, and the cultivation of a hard heart as well as a hard head is a very necessary procedure on the part of the insolvency practitioner if he wishes to avoid insolvency himself. It may be that the debtor comes to you with pockets bulging with writs, some of which are returnable for judgment on the following day. It is impossible for him to find the money to satisfy these pressing creditors, and as the payment to one would be unfair to the others you recommend him to protect his assets for the benefit of all by assigning them to yourself. The effect of the assignment will be that when the suing creditor or creditors obtain judgment on the following day there will be no assets in the hands of the debtor on which they levy execution, because the assets have now passed from him to you.

Of course, in advising a deed of assignment you have to bear in mind the possibility of a creditor or creditors for more than £50 placing the matter in bankruptcy as a result of the deed (in which case you or any member of your firm would not be allowed to act as trustee), but as the debtor will probably have been introduced to you by one of his largest creditors (a client of yours), who will be able to influence the other creditors to assent to the deed, you must use your judgment and experience as to this.

If you do not feel safe as regards bankruptcy, or you feel that you have not enough influence with the creditors in the particular trade concerned, it would be well, in the interests both of your client and the debtor, to approach some recognised insolvency accountant in the trade with a view to his taking the deed.

EXECUTION OF THE DEED.

We will assume, however, that you have decided to take the deed yourself. The next point to consider is the form of the deed, *i.e.*, as to whether you require—

1.—A committee of inspection.

2.—To exclude leasehold property.

3.—A clause enabling you to re-assign the assets to the debtor on payment of a composition, &c.

There are various recognised forms of deed printed and sold by law stationers with which you should make yourself familiar. The simplest and probably the best is Form 150, published by Waterlows, London. This excludes from the assignment leaseholds burdened with onerous covenants, and does not require the services of a committee of inspection; nor does it introduce any question of re-assignment to the debtor.

The preparation and registration of the deed are essentially work for a solicitor, but in small estates, where no heavy legal questions are likely to arise, it is not unusual for the trustee to do this work himself to save costs.

Registration of the Deed.

The deed must be registered within seven days of its execution by the debtor at the Registry of Bills of Sale (Board of Trade, Great George Street, London, S.W.). If the seventh day is a Sunday, sect. 8 of the Deeds of Arrangement Act, 1914, states that the deed may be registered on the following Monday.

The documents which must be presented to the Registrar of Bills of Sale are as follows:—

1.—The original deed (which is stamped by the Registrar and returned to the trustee).

2.—A duplicate of the deed (which is retained on the Registrar's file).

3.—The debtor's affidavit which contains an estimate of his assets and liabilities, and gives a list of creditors (names, addresses and amounts) (this is retained on the Registrar's file).

4.—An affidavit as to the execution of the deed by the person who witnessed the debtor's signature (also retained by the Registrar).

The fees payable are as follows:—

Stamp on duplicate of deed	£1	0	0
Stamp on original deed		10	0
Filing stamp on original deed		5	0
Filing stamp on affidavit of debtor ..		2	6
Filing stamp on affidavit of witness ..		2	6
	2	0	0
Add affidavit fees on affidavits of debtor and witness		4	0
	£2	4	0

In addition to an *ad valorem* duty of 1 per cent. on the assets passing under the deed.

If the debtor has his place of business in London and resides outside the county area, a further copy of the deed will have to be made by the London Registrar for the use of the Registrar of the County Court concerned, and you will have to pay an additional fee of approximately 10s. for this copy.

If the assets are considerable you will note that the filing fees are comparatively large and have to be found by you before the registration can be completed. If you have not realised any assets out of which to pay these fees and you find them out of your own pocket, and the deed subsequently becomes void for any reason before you have realised sufficient to cover them, you stand a lively chance of making a loss on the transaction. In such circumstances it behoves you to move warily.

Statutory Declaration re Assent of Creditors.

When the deed has been filed the next step is to obtain the assent of a majority in number of creditors whose individual debts amount to over £10, and a majority in value of all the creditors, excluding of course the secured portion of the debt of any person who is a partly secured creditor. Sub-sect. 3 of sect. 3 of the Deeds of Arrangement Act, 1914, says that creditors cannot assent to the deed otherwise than in one of the two following ways:—

1.—By the creditor executing the deed of arrangement, or

2.—By the creditor sending to the trustee his assent in writing attested by a witness.

You will note the distinction between the foregoing and the creditor voting in favour of a resolution approving the deed at a meeting of creditors. In practice, however, if a majority of creditors vote at a meeting in favour of a resolution approving a deed, one of such creditors composing the majority cannot afterwards file a successful petition in bankruptcy in which the deed is cited as the available act of bankruptcy. The deed will not be available to him, but he probably could file a petition against the debtor based on some other act of bankruptcy, *e.g.*, failure to comply with a bankruptcy notice.

It will be necessary that the requisite majority of creditors shall have assented to or executed the deed within 21 days of its execution by the debtor. Time in this case is the essence of the contract, and you should be careful to note that each assent is properly dated, or, in case of the creditor executing the deed, that a note of the date is made opposite the name of the creditor on the deed.

It is, of course, possible, by making an application to Court, to get an extension of time for obtaining assents of creditors, but the Court will only grant this for some very good reason, *e.g.*, where important creditors reside in a distant country. The Court will not be influenced by your going there and saying that Tom Jones is very stubborn but you hope to get him to-morrow, or that the debtor's wife is going to give Jones a bit on the quiet as soon as she can sell some furniture. It will not even influence the Court if you explain that this furniture was a wedding present from a maternal aunt deceased.

The assents of the creditors are most important documents, and should be very carefully preserved.

The trustee has to file the statutory declaration re assents within 28 days of the execution of the deed by the debtor unless the Court has extended the time for doing so.

Security by Trustee.

The trustee must within seven days of the filing of the statutory declaration re assents, give security to the registrar of the local Bankruptcy Court in a sum equal to the estimated amount available for distribution to unsecured creditors. The amount of the unsecured creditors for this purpose is calculated from the figures given on the debtor's affidavit.

The Deed of Arrangement Act, 1914, does not specify that the cost of giving this security should be borne by the trustee personally, and such cost may be paid for out of the estate under power contained in the deed.

The giving of security may be dispensed with (and usually is) either

1.—By resolution passed at a meeting convened by notice to *all* the creditors; or

2.—By writing addressed to the trustee.

It is usual to include on the form of assent a resolution that the giving of security by the trustee be dispensed with, and in this connection it is amusing to watch some more or less illiterate creditors when they hear or read that something is being dispensed with. They usually become very suspicious and flatly refuse to sign. You then scratch out the security clause, take the signature, and explain that the cost of the security will, as a result, come out of the creditors' pockets. This has as a rule the required effect, although it means a new form.

You will note that if you are relying on the resolution at the meeting, it must be a meeting convened by notice to all the creditors.

The declaration that security has been dispensed with must be filed within seven days of filing the declaration *re* assents.

Meetings of Creditors—Deeds of Assignment.

You may have noticed when in conversation with an insolvent person that he seldom or never tells you that he has executed a deed of arrangement. His favourite phrase is "I called a meeting of my creditors," or "I called my creditors together." Now that gentleman would no doubt be surprised to know that under a deed of arrangement there is no statutory or other obligation as to the holding of a meeting of creditors.

The calling of a meeting, although usual, is altogether at the discretion of the trustee. If he can get the necessary assents to the deed without calling the meeting, then he can save himself the trouble and the estate the expense of doing so.

In dealing with some classes of business which bristle with sharks, the young and inexperienced trustee may expect to have the estate snatched out of his hands, or to have an "old man of the sea" in the shape of a joint trustee fastened around his neck. In such cases it might be wise not to hold a meeting, but to deal with the creditors individually. On the other hand creditors in some trades simply clamour for a meeting, and if you delay it long enough to give them what you consider time to get used to their loss they may become so enraged as to visit you and damage your office furniture.

Yet again, if you do not call the meeting and fail to get your majority, the debtor, although it may not be your fault, will almost certainly tell his friends and friendly creditors that it was all because you did not call a meeting, and when another case which they can influence comes along you don't get first refusal of it. You will observe that you have to possess a good deal of personality and have an exact knowledge of the psychology of the particular trade concerned before you can successfully carry through a deed of assignment in it. It is obviously more difficult to deal with a man who has just made a big bad debt than it is to make a gentleman who has made large profits pay his correct amount of income tax.

Committee of Inspection.

There is no necessity to have a committee of inspection unless its existence is provided for by the form of deed adopted, but it may still be advisable to have one appointed at the meeting of creditors.

Insurances.

The trustee should see that the assets are properly covered by insurance against risks by fire, burglary, third party indemnity, &c.

Realisation of the Assets.

The usual form of deed gives power to the trustee to realise the assets without the consent of or reference in any way to the committee of inspection. He is thus in a position to commence realisation immediately after the execution of the deed and before it is registered. He is not hampered like the trustee in bankruptcy by the necessity of having to obtain the consent of the committee of inspection to employ such agents as a solicitor, auctioneer, valuer, &c., unless the deed specifically provides therefor. He may similarly bring and defend actions and carry on the business, &c., and do any other act which in bankruptcy would require the consent of the committee, the Court, or the Board of Trade. It must be remembered, however, that his powers are strictly limited to those specified in the deed.

This freedom of the trustee is not altogether an unmixed blessing. If he makes a mistake he cannot shelter behind the coat tails of the committee of inspection. Whatever he does is done on his own responsibility, and he cannot throw the blame on others.

The trustee should know the best markets and the right time to sell. He should be able to judge wisely whether a certain stock will sell best by tender or by auction or in the ordinary course of trade. He should be able to form a quick conclusion as to the merits or defects of a business, and the possibility of selling it as a going concern. He must know the particular type of article he is selling, and whether or not the debtor has already "sold the eyes" out of the stock in order to bring in sufficient money to pay wages and expenses. It may be that the main portion of the stock consists of dead or out of date commodities. For instance, if the stock of a toy merchant under a deed executed about Christmas consists chiefly of sailing boats left over from the last summer, the trustee's best plan would probably be to sell the Christmas stuff for what it would fetch at the time, and store the boats until their proper season.

You always have to face this position: the debtor, in his affidavit filed with the deed, gives an estimate of the value of his assets, and this estimate will dog your footsteps right through the administration of the estate. It appears at the foot of each half yearly account you send to creditors, and they have ample opportunity of comparing your realisations with the debtor's estimate. If your figure is much lower your obvious explanation is that the debtor's estimate was too high. The creditor will probably take an early opportunity of telling the debtor what he thinks of him, to which the debtor's obvious reply with reference to you will be, "Oh, that fellow is no good; he does not know how to realise stock." You may now be saying to yourselves, "Well, I should get the debtor to estimate below realisable value," but you are forgetting the fact that the debtor's statement is made on oath, and if you influence him to make other than an honest statement you are making yourself morally guilty of perjury, and, secondly, if the creditors see how small the assets are they probably will not wait for explanation before filing a petition in bankruptcy. Your aim in realisation must therefore be to beat, and well beat, the debtor's honest estimate if you wish to have the support of the creditors on any future occasions when they may be unfortunate.

Deeds of Composition.

Some philosophic member of the profession once described insolvency work as the "undertaking" department of accountancy. Personally, I prefer the analogy of a hospital where the lame and the halt and the blind of the business world receive treatment. It is true that it is a hospital with a large mortuary, which is usually well filled. Bankruptcy cases, liquidations generally, and deeds of assignment may be said to be incurable cases to which the doctor administers as peaceful a death as possible, but receivership businesses sold as going concerns and deeds of composition may be regarded as the cures.

Deeds of composition are primarily suitable for a man with a fairly sound business, who, through ill-health, from which he has recovered, an unexpected trade slump, or other such unfortunate circumstance, finds himself unable to realise his accumulated stocks sufficiently rapidly to meet his liabilities. Deeds of composition are not suitable for the bad manager, the reckless liver, the man who overtrades, or who is otherwise unreliable. You must not infer from this that all debtors executing deeds of composition are upright honest unfortunate men. Very often in cases where the statement of affairs shows the probability of only a small dividend the creditors will issue an ultimatum such as "10s. or bankruptcy." This means that if the debtor, whose estate may show 5s. in the £ on paper, cannot borrow or find the necessary money to pay 10s. in the £, he will have to undergo the penalties of bankruptcy for his misdeeds, but here you have a *primâ facie* case for a deed of assignment containing a composition clause.

In cases where there are judgment creditors—who, as you know, are in a position to levy immediate execution—I have already remarked that a deed of assignment should be taken at once to protect the assets. If there is, however, a probability of a deed of composition under which a substantial amount in the £ is likely to be paid, it is probable that these judgment creditors will be prepared, in the interest of the creditors generally, not to act under their judgments until after the meeting of creditors. In this case a deed of assignment will not be necessary before the meeting, but it is advisable to get the consent of the judgment creditors in writing. If the assignment should be necessary and the debtor desires to have his business back, a clause should be inserted in the deed of assignment providing for the re-assignment to the debtor of the assets in the event of his paying or securing a composition of a specified amount to the satisfaction of a committee of the creditors.

DEEDS—EXCLUSIVELY OF COMPOSITION.

A deed which is purely one of composition differs from a deed of assignment in that

1.—There is no assignment to the trustee of the assets of a business to pay the composition, and consequently no question of realisation of specific assets by the trustee.

2.—The debtor keeps possession of his assets and carries on business as usual.

3.—So long as the money necessary to pay the composition is paid to the trustee on the appointed dates for distribution to the creditors the business is not interfered with.

4.—The debtor is free to draw what money he wishes from the business for his private purposes up to a reasonable amount.

From the foregoing you will observe that deeds of composition which exclude any question of the assignment of the debtor's property to the trustee, require a large measure of good faith between the debtor and the creditors.

You have to bear this well in mind and know your man before you recommend a deed of composition. If you get a debtor who may best be described as a "twister," you will have to think twice before you approach creditors with his proposition. If the creditors have faith in you, and you lead them to believe that the business will be safe in the debtor's hands, and he subsequently realises half the assets and decamps abroad, your creditors' faith in you will receive a nasty shock.

Of course, although technically the trustee has no control over the business of a debtor who has executed a deed of composition pure and simple, the trustee should, in his own interest and that of the creditors, keep a watchful eye over the activities of the debtor, and if he thinks there is anything amiss he should at once call a meeting of the creditors and report to them.

MEETING OF CREDITORS—DEEDS OF COMPOSITION.

The trustee under a deed of composition is more or less in the position of an interested looker-on. Apart from any personal recommendation the trustee may make with regard to the debtor, the creditors take full responsibility for the debtor's behaviour. It will be obvious that the holding of a meeting is the best means of obtaining the collective opinion of the creditors, and in practice a deed of composition is rarely, if ever, executed, except as the result of a resolution of creditors passed at a meeting.

I may remark in passing that the debtor is never present at meetings of creditors, either under deeds of assignment or deeds of composition, but he should be kept in attendance in an adjacent room in case any of the creditors wish to question him at the meeting.

I am afraid I have been rather garrulous regarding the different cases to which deeds of assignment and deeds of composition are applicable, but as I found some difficulty with the point in early student days I have been tempted to stress it, and hope for this reason you will forgive me.

I have now come to the end of what appears to me for purposes of this paper to be the different considerations relating to deeds of composition and deeds of assignment. From this point forward I propose to deal with procedure which is analagous to both.

REGISTRATION, ASSENTS, AND TRUSTEE'S SECURITY.

Deeds of composition are registered in precisely the same manner as deeds of assignment, and the remarks which I have made earlier with reference to deeds of assignment under this heading apply equally to deeds of composition.

VOID DEEDS.

I need not trouble you by reciting the circumstances which render a deed void. I will merely deal with one of the problems which arise in connection with void deeds. You will remember from your study of bankruptcy law that sect. 45 prevents the trustee making any payment to or on behalf of the debtor if he has notice of any available act of bankruptcy committed by the debtor. The late trustee has had notice of an act of bankruptcy by reason of the execution of the deed, and he is holding certain property which came into his possession as a result of the deed. If no receiving order has been made he cannot hand over to the official receiver, and he is liable to a penalty if he continues to act under the deed. His only course in such case will be to wait until the three months expire and then hand the estate back to the debtor. The trustee must not forget to comply with sect. 20 of the Deeds of Arrangement Act, 1914, as regards giving notice to the creditors and the registrar of bills of sale that the deed has become void.

CLAIMS OF CREDITORS.

Whilst the trustee has been realising the assets, or alternatively getting in the composition, he will have been constantly agreeing claims of creditors. There is no official form of proof as in bankruptcy, and it will be sufficient if the creditor sends in his claim in the form of a letter or an ordinary monthly statement. Where a creditor has taken, or is in the course of taking, legal proceedings against the debtor, it is often made a condition of the creditor's assent that his law costs be paid in full. Some forms of deed give power to the trustee to make such compromises as this, whilst other forms of deed require the consent of the committee of inspection. The trustee should make the agreement for the payment in full of law costs to suing creditors conditional on the deed becoming absolute.

PAYMENTS OUT OF THE ESTATE.

In making payments out of the estate, it is well to bear in mind the form of receipt which the official receiver gives to a trustee under a deed where the estate goes into bankruptcy as the result of a petition filed within three months of the execution of the deed. This receipt is as follows:—

> "Received from A.B. the sum of —— pounds —— shillings and —— pence being the amount alleged by him to be the balance in his hands as trustee under a deed of arrangement dated —— without prejudice to the rights of the trustee in bankruptcy to dispute the figures or the legality of the deed or of any payment or proceeding thereunder."

You will observe that it is not safe to pay out everything until the estate is clear of the risk of bankruptcy and the deed becomes what is termed "absolute." The latter does not happen until after the expiration of three months from the

date of the execution of the deed. You will remember that under sect. 37 of the Bankruptcy Act, 1914, the title of the trustee in bankruptcy to the debtor's property relates back to the first act of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of presentation of the bankruptcy petition.

The trustee under the deed will of course be entitled, under sect. 21 of the Deeds of Arrangement Act, 1914, to a first charge on the assets in respect of any expenses properly incurred by him. He will not be entitled to any remuneration for his services unless the committee of inspection or the creditors in the bankruptcy vote him such.

If a petition in bankruptcy has been filed it is not safe to paypreferential creditors unless they would also be preferential creditors in the bankruptcy in the event of a receiving order ensuing. Where there are heavy arrears of wages or national insurance the trustee should limit his payments to amounts accrued due during the month before the deed.

In making payments to solicitors, auctioneers, &c., whom you have employed, you have to bear in mind the possibility of an audit being subsequently required, in which case their costs, charges, &c., may have to be taxed. You should accordingly obtain an undertaking from them to refund any portion of their costs, charges, &c., which may be disallowed on taxation.

Of course, no payments should be made to creditors of any kind until costs and trustee's remuneration have been provided for.

DIVIDENDS.

Should it become urgently necessary to distribute the estate before the three months have elapsed, advantage may be taken of sect. 24 of the Deeds of Arrangement Act, 1914, after the statutory declaration verifying the creditor's assents has been filed. This section provides machinery for reducing the period of three months to one month from date of giving the creditors notice that unless they file a petition in bankruptcy within one month they cannot afterwards use the execution of the deed as an available act of bankruptcy unless the deed becomes void. This section is very seldom taken advantage of. Most trustees appear to follow the motto of "let sleeping dogs lie," and they are reluctant to stir up the creditors until the three months have elapsed.

Creditors who have not assented to the deed are not entitled to claim dividend. Their remedy is to put the debtor in bankruptcy, but if they file a petition after the deed has become absolute the assets of the estate cannot be claimed by the official receiver or trustee should bankruptcy ensue. The trustee under the deed should reserve for such creditors on paying the first dividend, as in most cases when they find there is money to be had for the signing they forget about bankruptcy.

Before declaring the first dividend the trustee should insert an advertisement for claims in two local papers. The form of this is as follows:—

> In the matter of a deed of assignment (or composition), &c. (here set out the name of the estate in full). The creditors of the above named debtor who have not already sent in their claims are required on or before the —— day of —— 1925 to send their names and addresses and particulars of their debts or claims to the undersigned—(name and address)—the trustee under the said deed, or in default thereof they will be excluded from the benefit of the dividend about to be declared.
>
> ..... *Trustee.*

The last day for sending in claims is usually fixed at a date from 14 to 28 days from the date of advertisement. This advertisement acts as additional protection to the trustee as regards creditors who may not have had notice of the deed of arrangement.

Before declaration of interim dividends the trustee should provide ample reserves to cover costs. He will, of course, have paid all preferential claims in full.

FINAL DIVIDENDS.

The reserves to be provided in the declaration of final dividends depend on circumstances, and their accurate calculation requires the utmost care. The trustee should refer to his notes of undertakings, &c., given in his dealings with the estate. It may even be advisable to rapidly review his correspondence files in case any claim has been overlooked.

The following matters should receive special attention:—

1.—Trustee's remuneration.

2.—Cost of trustee's solicitor.

3.—Law costs of suing creditors (where undertakings given).

4.—Cost of advertising for claims.

5.—Gas, water, electricity, rent, rates, and Schedule A tax accounts in respect of premises occupied by the trustee.

6.—Income tax on deposit interest earned by the trustee (if any).

7.—Reserves should always be made for:

(*a*) Affidavit fees on trustee's final accounts:—

	s.	d.
Affidavit of receipts and payments ..	2	0
Trustee's account exhibited therewith (if any)	1	4
Dividend list exhibited therewith (if any)	1	4

(*b*) *Ad valorem* duty on trustee's final accounts:—

7s. 6d. per £100 up to £500.

3s. 9d. per £100 in excess of £500.

This duty is calculated on the amount of assets brought to credit in deed of assignment cases, and the amount of composition charged in composition cases.

(*c*) Postages.

(*d*) Cheque stamps.

(*e*) Stationery and printing in connection with final accounts to creditors and Board of Trade. The cost of printing a three page account to creditors (*i.e.*, declaration of dividend, half-yearly statement and dividend receipt and authority) is approximately £3 10s. for 100, and £3 5s. for 50. One page statements cost about £2 5s. for 100, and £2 2s. 6d. for 50.

It should be borne in mind that if the trustee pays a final dividend without reserving for an admissible claim of which he has had notice, he will be held personally liable therefor.

ACCOUNTS TO CREDITORS.

Where deeds of arrangement executed prior to April 1st, 1914, are still in existence, no half yearly accounts need be sent to creditors since sect. 14 of the Deeds of Arrangement Act, 1914, does not apply.

In cases of deeds executed on or after April 1st, 1914, sect. 14 of the Deeds of Arrangement Act, 1914, makes it necessary for trustees to send a statement of accounts and proceedings to assenting creditors every six months from the date of registration of the deed. The first statement should commence with the date of the execution of the deed, and end with the date six months after registration. The particular form of the statement is specified in No. 13 of the appendix to the Deeds of Arrangement Rules, 1915.

Most trustees send out this statement in print, and the cost of such printing is a recognised charge against the estate.

It is superfluous to have the signatures of the committee or an audit certificate by them appended to the statement, and some trustees appear to overlook the fact that the report at the foot of the form is as necessary a part of it as the summary of receipts and payments.

A clause stating that these accounts have been sent to creditors forms part of the trustee's affidavit verifying his accounts to the Board of Trade.

BANK ACCOUNT.

The trustee should open a separate bank account for each estate at a local bank. All receipts should be banked, and all payments made by cheque. You will note that on the half yearly statement sent to creditors information from the trustee as to what have been the total payments into and out of bank is required.

ACCOUNTS TO BOARD OF TRADE.

The statement sent to creditors is principally composed of a summary of receipts and payments. This statement is not sent to the Board of Trade unless asked for by them. The accounts to be sent to the Board of Trade are as follows:—

1.—A detailed account of the trustee receipts and payments. (Form No. 16.)

2.—Trustees trading account (if any) duly audited by the Committee of Inspection (if any). (Form No. 19.) Rule 32 of the Deeds of Arrangement Act, 1914, requires that when the trustee carries on a business a trading account must be forwarded as a distinct account, and the totals only of receipts and payments must be carried to the yearly account.

3.—List of dividends or composition payments. (Form 20.) This is an account of dividends or composition paid since commencement or since the last annual account, as the case may be. It must not be verified by affidavit until the final account is rendered. The dividend list sent with the annual accounts forms part of the trustees account of receipts and payments, the totals of such list being carried to the account. When the final account is sent in a comprehensive final dividend list has to be verified by affidavit and lodged (*i.e.*, if more than one dividend has been paid a list incorporating all dividends or composition payments in total has to be rendered).

If a final dividend has been paid between the last annual account and the final account it will not be necessary to send in a detailed list thereof, the final comprehensive list being sufficient. The form also provides for a list of unpaid dividends at the date of certification of the list by the trustee.

4.—Affidavit verifying trustees account. There are two forms of this account for use in connection with deeds registered on or after April 1st, 1914. One is for the annual account and the other for the final account.

There are also two forms of affidavit in respect of deeds registered before April 1st, 1914. You will note that the distinction between the pre 1914 forms and the post 1914 forms is that in the former case the clause regarding accounts sent to creditors is omitted. Where there are joint trustees both should join in the affidavit.

All of the above forms may be purchased at any law stationers.

PERIODS OF ACCOUNTS TO BOARD OF TRADE.

In the case of deeds registered on or after April 1st, 1914, the accounts commence with the date of execution of the deed, and the first annual account ends at a date twelve months from the date of registration of the deed. The next account commences with the total, and not with the balance brought forward from the previous account.

The accounts must be transmitted to the Inspector-General in Bankruptcy (who is the Board of Trade official dealing therewith) within 30 days of the expiration of the twelve months. Failure to do so may involve a fine of £5 for each day during which default continues.

Accounts in respect of deeds registered prior to April 1st, 1914, run from January 1st to December 31st in each year, and not from year to year at date of execution.

If the estate is wound up within one month of the date of the annual account, then the account may be made up to the completion of the winding up, and a final account may be filed instead of the annual account. Final accounts can, of course, be rendered at any time during the year.

PREPARATION OF ACCOUNTS FOR BOARD OF TRADE.

A memorandum showing payments into and out of bank and the balance at bank should be made at the foot of Form 16.

Distinction should be made in the narrative between law costs for preparation and registration of the deed and law costs in connection with legal work done for the trustee. If no law costs for preparation and registration are charged in the account a note should be made at the foot of the account whether or not the debtor made any, and if so what, payment in respect of such costs.

The gross proceeds of sales by auction or otherwise must be entered as receipts, and the charges, whether paid directly by the trustees or deducted by the auctioneer, as payments. Where such charges have been made by the purchaser the fact should be stated in the account together with the amount of the charges, if within the knowledge of the trustee. If any property has been disposed of by private treaty, or by tender, the fact should be stated in the accounts.

Trustee's out-of-pocket expenses (or petty cash payments) are entered not on the imprest system but in bulk at the end of the account, and a schedule giving details sent in with the account. Where at the date of the account the trustee has made payments out of his own pocket which he has not yet recouped from the bank, such payments should be entered as if already made.

Attention to the above detail will save endless queries from the Board of Trade. They do not require vouchers in support of the accounts, but it is advisable when preparing the accounts to collect and carefully file away such vouchers in case an audit of the accounts may be called for later. Some trustees make a practice of sending in vouchers with the account, and by this method save many queries. The vouchers are returned later by the Board of Trade.

The *ad valorem* stamp duty is calculated as follows:—

1.—Under a deed of assignment—on the amount of assets brought to credit in each account after deduction of trading payments and payments to redeem security.

2.—Under a composition deed—on the amount of composition paid during the period covered by each account.

The duty is paid by means of adhesive bankruptcy stamps to the value of the amount required. These should be affixed to the account of receipts and payments, and left for the Board of Trade officials to cancel.

Where no receipts and payments have occurred during the period of the account, the affidavit should be completed by the trustee to this effect.

AUDIT OF ACCOUNTS.

You will remember that the Committee of Inspection (if any) have to certify the trustee's trading account (if any), and the certificate required is in the following form:—

> "We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper."

Apart from this there is no audit of accounts under deeds of arrangement except in rare cases where sect. 15 of the Deeds of Arrangement Act, 1914, is brought into service by the creditors. I will not trouble you by repeating the provisions of this section, with which you are all no doubt acquainted, and which needs no special comment.

DESTRUCTION OF DEBTOR'S BOOKS.

In view of the possibility of an audit of the trustee's accounts within twelve months from the date when the final accounts of the estate were rendered to the Board of Trade, the debtor's books should not be destroyed or otherwise disposed of until that period has elapsed.

UNPAID BALANCES IN TRUSTEE'S HANDS.

The filing of the final account concludes the administration of the estate except in respect of any unpaid dividends which remain in the trustee's hands. Under sect. 16 of the Deeds of Arrangement Act, 1914, application should be made to the Bankruptcy Court for an order that such moneys be paid into Court at the end of two years from the date of registration of the deed. The Board of Trade periodically make inquiries with regard to such balances.

Where (after the final account has been filed) moneys come into the trustee's hands which are of an amount sufficient to warrant the payment of further dividend, the trustee should re-open the matter and pay the dividend accordingly. If, however, the amount received is negligible it should be added to the unpaid dividends when transmitting the latter to Court.

Discussion.

The CHAIRMAN: We have all listened with great attention to Mr. Mahony, although we may not all have agreed with everything he has said. For instance, he told us something about a decamping debtor, and then said he was "pure and simple." (Laughter.) I hesitate to think that any debtor who decamps with half the estate is pure and simple. I do not know whether you would like to hear about two deeds of arrangement of which I had some experience. A gentleman in the East End of London, who was engaged in the fur trade and was of the Jewish persuasion, called a meeting of his creditors in the East End. The creditors went down there, accompanied by a well known solicitor and an equally well known accountant, and after a very acrimonious discussion it was decided that the debtor should forthwith execute a deed of assignment. The solicitor happened to have in his pocket one of those convenient forms of which Mr. Mahony told us, published by Messrs. Waterlow & Sons, and the debtor thereupon executed the deed of assignment. They adopted a suggestion of Mr. Mahony's and appointed a committee of inspection, and I am told, on very good authority, that the committee of inspection and the trustee thereupon took the debtor into the adjoining room and, laying forcible hold of him, turned out his pockets and produced sufficient assets to pay the creditors in full. (Laughter.) That debtor may not have been pure, but he was certainly simple. (Laughter.) Now, I had a somewhat similar experience. I do not want to make any invidious distinction, but this is a true story in which I was concerned. A debtor, who was also simple but, I am afraid, not very pure, was engaged in business in the provinces. He came up from the country, called a meeting of his creditors, and I went to the meeting on behalf of the largest creditor. When I got there I found that he had brought up from the provinces his accountant and a duly executed deed of assignment. Some figures were put before us, and we were told that, if we liked, we could have a composition of 3s. in the £. After a little discussion it was decided to adjourn the meeting for a fortnight in order that we might investigate, and, being people with very little time to waste, we caught the night train down to the provinces. The next morning—whilst the debtor, the solicitor and the accountant were enjoying the delights of London—we were investigating the business on the spot. The result was we found that there had been a voluntary settlement by the debtor of sufficient assets to pay all the creditors in full. In that case the creditors did receive 20s. in the £, and the costs of the accountant, which, as Mr. Mahony says, is a very important matter, were not lost sight of. (Laughter.) Now I would like to hear some of you go for Mr. Mahony, and controvert some of the propositions he has put forward.

Mr. CRICK: I have quite enjoyed the practical lecture by Mr. Mahony, and while I have not enough experience to controvert some of his propositions, yet it strikes me from his remarks that he must be very careful how he acts. From first to last he must bear in mind the possibility of subsequent bankruptcy, and the fact that at any time within three months of the execution of the deed any payments he may have made may be challenged in the Bankruptcy Court. I think the best thing to do is to put the money in the bank and sit down tightly on it. I might mention a practical point about rates, telephone and similar items. It is often lost sight of that the telephone and electric light people usually have deposits in hand against their bills. I have met with cases where such people have received a dividend on their debt without disclosing the amount of their deposit.

Mr. STRAKER: The last speaker referred to telephone deposits and electric light deposits. I have just had a case of a telephone deposit. Personally, I was not aware of it until they put in their proof. It was in a bankruptcy case, but it applies to a composition or deed of assignment. Condition 6 of the telephone agreement, which every subscriber signs, provides that in the event of bankruptcy, or a composition with creditors, the Post Office are entitled to prove for another three months rent as liquidated damages (not as penalty). This is in addition to any other sum due, and the consequence is that it swallows the deposit up. This is their way of assuring themselves 20s. in the £, which is really all they want. There is another point on which I have never been quite clear. We all know that creditors who do not assent to a deed are not bound by the deed. Mr. Mahony told us quite a lot about execution creditors and protecting the property against them, but what I can never understand is, if a solicitor gets judgment against a debtor and the debtor executes a deed, directly the solicitor hears this deed is likely to come about he refuses to proceed further. I cannot understand the reason for that.

Mr. MAHONY: I can only suggest that the solicitor is acting in the interests of his creditor client, and probably the client does not wish to take undue advantage of his judgment as regards the other creditors who are unsecured, but there may be other reasons.

Mr. STRAKER: I have known several cases. There was a firm of solicitors here in London who got judgment, and when the day arrived for execution we heard from them that there was a deed of assignment, and consequently they would not go to execution.

Mr. MAHONY: If a deed of assignment has been executed there are no assets on which to levy execution, because the debtor has parted with his assets to the trustee.

Mr. STRAKER: Exactly; but does the transfer of the assets take place merely because the debtor agrees to the deed of assignment?

Mr. MAHONY: It takes effect the moment the debtor executes the deed. The assets then pass at once to the trustee.

Mr. STRAKER: Even though the trustee is not a creditor, and the auditors have not been informed?

Mr. MAHONY: Yes.

Mr. STRAKER: But if the creditors do not agree the deed may become void?

Mr. MAHONY: It may become void subsequently for that reason, in which case, of course, the judgment creditor could levy execution at once.

Mr. WILDRIDGE: I have listened with very great interest to Mr. Mahony's lecture, and I am quite sure that it will prove useful to the profession generally, and particularly so to those members of the profession who are actually engaged in the work with which he was dealing. There are two points, however, to which I would like to draw particular attention this evening. These points have been dealt with by the Lecturer, but I consider them important, and that is the reason why I want to mention them. The first point is this: It is sometimes necessary for the trustee, in a deed of assignment case, to agree to pay the costs of certain creditors in order to obtain their assent to the deed. The payment of these costs is not usually made until the final dividend is about to be paid. It is therefore very necessary for the trustee to include such costs in his list of reserves for the final dividend. The second point is in regard to tax on interest. As you know, it is provided in the deed that the trustee must open a separate banking account, and it sometimes happens that interest is earned in connection with that account. It is necessary for a trustee to provide in his list of reserves for the final dividend for the tax on that interest, as this tax has to be accounted for by him to the Inland Revenue Authorities. I think these two points are important to bear in mind, otherwise the trustee will find himself out of pocket. I think the various points have been very well covered by the Lecturer.

Mr. VANSTONE: In the early part of the lecture, Mr. Mahony said that there was no necessity to have a committee of inspection unless required by the deed, but that it is desirable to have one appointed. Would he mind explaining why it is desirable to have a committee appointed, and what control would such a committee have over the trustee?

Mr. MAHONY: Your point is, I think, that if a deed does not provide for the appointment of a committee of inspection, and you get one appointed, what power has that committee got? Of course, the committee would have no power whatever. They are there in an advisory capacity, and the trustee can take their opinion as to what is the best method of realising stock, or as to other matters. There is, however, no obligation on him to take any ruling which they may make.

Mr. W. G. STRACHAN, Incorporated Accountant: There is one point on which I should like to hear Mr. Mahony's opinion. I understand that, in the case of a company entering into a deed of arrangement, it is not necessary for the company to register the deed, although an individual making a similar arrangement with his creditors does require to register it. Is that because deeds of arrangement are not in fact applicable to companies? I have in mind a particular case where such a deed was entered into, and there were creditors who would have taken advantage of that fact if possible.

Mr. MAHONY: I cannot say that I have ever heard of a company executing a deed of arrangement. I should think that where a company wishes to make an arrangement, it would have recourse to sect. 120, or sect. 192 of the Companies Act, 1908, in which latter case it would have to go into liquidation. I think you will find that deeds of arrangement are confined to individuals and to firms. I may be mistaken, of course, but I have never heard of the reverse.

Mr. F. PHILLIPS: I should like to ask a question as to the position of creditors. It is not actually within the scope of the lecture, but I think it is a very interesting point. We know that in the case of a husband and wife, where one party is trading and the other party lends money, or is a creditor for goods or other consideration, that party is a deferred creditor in the estate; but I have not been able to ascertain from any reference books whether in a case where money has been lent by a partnership, or by partners in a joint account, to a person carrying on a business, and one of the partners or one of the persons in the joint account has been the husband or wife—whether that would be a deferred debt, or whether it would rank *pari passu* with the other creditors.

Mr. MAHONY: There is a clause in every deed which says that the amount realised from the assets shall be distributed in accordance with the rules of distribution in bankruptcy. That would make the wife, if a deferred creditor in bankruptcy, a deferred creditor also under deeds of arrangement. But I am not sure whether that was your exact point?

Mr. PHILLIPS: No.

Mr. MAHONY: Then your point was, where there is a partnership, whether one partner lending money would be a deferred creditor?

Mr. PHILLIPS: No; that point is decided. The case I mentioned was where the wife of the debtor is a joint creditor with another for a certain amount. There are two creditors either in partnership or in joint account, and there is money due to them from the insolvent debtor. One of these joint creditors is the wife of the debtor, does that make the debt a deferred debt?

Mr. MAHONY: That is a point on which I should take legal advice if the amount involved were serious.

The CHAIRMAN: There is just one other thing I might mention as it may be interesting. Within the last few days the registration of deeds of arrangement has been moved from the Bills of Sale Office to that of the Inspector-General in Bankruptcy. The Inspector-General in Bankruptcy is now the Registrar under the Deeds of Arrangement Act. That has happened since Mr. Mahony drafted his paper. The office for registration is now the Board of Trade.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Court of Session Reform.

A précis of the view of the Council of the Scottish Institute of Accountants (the Scottish Branch of the Society) was placed before the Royal Commissioners by the Secretary, one of the suggestions being the establishment of a Commercial Court.

Mr. James A. Ross, F.S.A.A., Aberdeen.

At the March meeting of the Aberdeen Harbour Commissioners, the Lord Provost referred to the retirement of Mr. James A. Ross, the Treasurer, after a service of 46 years. Complimentary remarks were also made by Mr. John H. Irvin, Convener of the Finance Committee, and suitable appreciation of Mr. Ross's services were placed on record in the minutes of the Commissioners.

Vocational Tests in Clerical Work.

A new note in lectures to students' societies was struck by Professor James Drever, of Edinburgh University, in a lecture to the Glasgow Chartered Accountants' Students' Society. The Lecturer, at the outset, referred to the development of vocational tests as one of the most interesting developments of modern psychology. Individuals differed from one another in general ability, &c., and it was these differences which present some of the most interesting problems to the psychologist, who wished to ascertain if there was really a central factor which could be described as general mental ability, or whether there was such a thing as general intelligence as a single factor. The anthropologist, on the other hand, became interested in the same question from the point of view of heredity. Professor Drever afterwards discussed these views in their relation to tests in clerical work.

Scots and Roman Law.

An interesting lecture was delivered in Edinburgh on the 23rd ult. by Sir Joseph Dobbie, S.S.C., on "Roman Law in Scottish Jurisprudence." Sir Joseph traced the development of the Roman law from 449 B.C., when the "Twelve Tables," the earliest known laws of the Roman people, were enacted, to A.D. 532, when the codes, pandects and institutes of the

Emperor Justinian were issued. No less than 2,000 treatises had then to be examined and conaidered by the Commission of Jurists who compiled these works. After the fall of the Eastern Empire various collections of the works on Roman law found their way into Western Europe, and a revival of the Justinian laws followed, one result of which was that when, in the reign of James V, the Court of Session was established, professors of civil law were appointed at Glasgow and Aberdeen Universities, and the King enacted that the great Scottish proprietors should study the civil law. Early in the twelfth century, in the reign of David I, there was a definite reception of at least part of the Justinian code in Scotland, and by the sixteenth century the Roman law had been largely incorporated in the Scottish system of jurisprudence by virtue of custom. In England, on the contrary, from about 1214, an English common law was created, built up of statutes and decisions. Accordingly, in English jurisprudence, Roman law has no authoritative place, and it was mainly on matters about which Scotland adhered to the Roman law that our law has differed from the law which holds in England. The Lecturer pointed out, with reference to the origin of "Scots marriages," that the Roman law provided for the legitimation *per subsequens matrimonium*, a humane doctrine only now being adopted in England, that amongst other provisions which he enumerated children were entitled to one-third of a parent's personal estate as *legitim*, notwithstanding a will to the contrary, and for marriage, being a simple contract, only required a mutual declaration to be effective. It was the incorporation of these laws with the customary laws of Scotland which still distinguishes Scots law from the law of England.

Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B.:—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Sessions Cases* (*Scotland*); S.L.T., *Scottish Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace* (*England*); L.G.R., *Knight's Local Government Reports*; B.& C.R., *Bankruptcy and Company Cases*.

The other abbreviations used in modern reports are H.L , House of Lords; A.C., Appeal Court (House of Lords and Privy Council); C.A., Court of Appeal; Ch., Chancery Division; K.B., King's Bench Division; P., Probate, Divorce and Admiralty Division; C.S., Court of Session (Scotland); J., Mr. Justice (King's Bench or Chancery); L.J., Lord Justice; L.C., Lord Chancellor; M.R., Master of the Rolls; P., President of Probate, Divorce and Admiralty.]

EXECUTORSHIP LAW, AND TRUSTS.

Re Brooker's Trusts.

Rule in Howe v. *Dartmouth.*

The rule in *Howe* v. *Dartmouth* ((1802) 7 Ves., 137) was that "Where personal property is bequeathed for life with remainders over, and not specifically, it is to be converted into the 3 per cents., subject in the case of a real security to an inquiry, whether it will be for the benefit of all parties, and the tenant-for-life is entitled only upon that principle."

Where a testator gave his residuary estate to trustees upon trust for sale and created a settlement of the proceeds, the tenants-for-life are entitled under the Law of Property Act, 1925, sect. 28 (2), to the whole of their share of rents and profits of leaseholds included in the estate, in the absence of any direction to the contrary in the trust disposition, and the rule in *Howe* v. *Dartmouth* ceased to operate as from the coming into force of the Act of 1925.

(Ch.; (1926) L.J.N., 276.)

REVENUE.

Attorney-General v. Duke of Bedford.

Succession Duty.

Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases and to the value of the property as at that date, less the ground rents, and not to the value of the property when the succession first arose, less the ground rents.

(K.B.; (1926) 42 T.L.R., 346.)

Inland Revenue v. Fisher's Executors.

Issue of Debenture Stock by way of Bonus.

A company which had in its balance-sheet a large amount of undistributed profits, including a sum standing to the credit of profit and loss account, reserve fund, and suspense account, resolved that part of these profits should be capitalised and distributed as a bonus and that debenture stock should be issued to the ordinary shareholders, *pro rata*, and accepted by them in satisfaction of the bonus.

The House of Lords held, affirming the decision of the Court of Appeal (see *Incorporated Accountants' Journal*, December, 1924, p. 88), that the debenture stock was not income to the recipients, and was not liable to assessment to super tax, inasmuch as the election by the company not to distribute the fund as income, but to apply it as income-producing capital, was binding on the shareholders and could not be questioned by the Crown.

(H.L.; (1926) 42 T.L.R., 340.)

Watson v. Rowles.

Managing Director of a Public Company.

Appellant was a shareholder and managing director of Studebaker, a private company consisting of four shareholders. His remuneration consisted of a salary and commission on profits. By the Income Tax Act, 1918, Schedule E, Rule 6, "The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom, namely (*h*) offices or employments of profit under any company or society, whether corporate or not corporate."

Rowlatt (J.) held that there was no ground for the appellant's contention that the words "offices or employments of profit under any company or society" in Rule 6, were to be read as referring only to offices or employments of profit under any public company or society.

(K.B.; (1926) W.N., 95.)

Reed v. Seymour.

Proceeds of Professional Cricketer's Benefit Match.

Rowlatt (J.) held that the sum of £939 16s. 11d. obtained from a benefit match of a professional cricketer was a mere present, and therefore not assessable to income tax.

(K.B.; (1926) W.N., 96.)

Owl Mill Company, Limited, v. Croft; Elliott v. Duchess Mill, Limited.

Falling off of Profits.

By Rule 11 of the rules applicable to Cases 1 and 2 of Schedule D of the Income Tax Act, 1918, "If within the year of assessment or the period of average on which the assessment is to be based any person succeeds to a trade, the tax payable in respect of the person so succeeding shall be computed according to the profits during the respective periods prescribed by this Act unless the person succeeding prove to the satisfaction of the Commissioners that the profits have fallen or will fall short from some specific cause since such succession took place, or by reason thereof."

It was held (1) that in ascertaining whether there has been a decrease of profits within the above rule a comparison must be made, not between the assessment for the year of assessment and the profits for that year, but between the assessable

profits for the period since succession and the actual profits for that period; (2) that where there has been a phenomenal trade depression affecting the individual, this amounts to evidence on which the General Commissioners of Income Tax may hold that there has been a specific cause within the rule.

(K.B.; (1926) 42 T.L.R., 365.)

Archer-Shee v. Baker.

Foreign Possessions and Income Tax.

A testator, who was a citizen of the United States, left his property to trustees in that country to be applied to the use of his daughter for life. The fund constituted under the will consisted of foreign government securities, stocks, and shares, and other foreign property. The appellant married the testator's daughter, and the trustees paid the income to her in America. The appellant was assessed to income tax on this income under Schedule D.

It was held that although the stocks and shares were not in law the possessions of the appellant's wife, and she had only an equitable right to call upon the trustees to administer the estate, yet the appellant was chargeable with tax under Rule 1 of Case V of Schedule D, which applies to the income from foreign stocks, shares, or rents, whether the income is remitted to the United Kingdom or not, and that Rule 2, as to foreign possessions other than stocks, shares, or rents, which requires the tax tobe computed on the sum annually received in the United King dom, was not applicable.

(K.B.; (1926) 42 T.L.R., 367.)

Earl of Derby v. Bassom.

Breeding Establishment kept as a Hobby.

A person who keeps a racing and breeding establishment as a hobby, and who also lets to others the services of his stallions, is liable to pay income tax on the fees received for such services.

(K.B.; (1926) 42 T.L.R., 380.)

Constantinesco v. The King.

Award by Royal Commission for user of Patented Invention.

Rowlatt (J.) held that income tax was deductible from a sum awarded by the Royal Commission on Awards to Inventors, it appearing that the sum in question was in fact the aggregate of royalties for the user by the Crown of a patented invention and not a capitalised sum in lieu of royalties.

(K.B.; (1926) 42 T.L.R., 383.)

Jones v. Nuttall.

Poultry Farming.

Where poultry are kept for the purpose of the production and sale of eggs, and where the poultry derive sustenance to a material extent from the produce of the ground and from the insects and minerals therein, the profits are to be treated as the profits of husbandry, and the poultry farmer is entitled to be assessed to income tax under Schedule B instead of Schedule D.

(K.B.; (1926) 42 T.L.R., 384.)

Gavazzi v. Mace.

Exercise of a Trade in this Country by Non-residents.

The appellants, who were silk manufacturers in Italy, had agents in London, who were general commission agents. These agents had no authority to accept orders on behalf of the appellants, but were able to quote prices to intending customers who paid the agents for the goods. The agents deducted their commission from the moneys so received. The appellants were assessed to income tax in the name of their agents.

It was held that the appellants exercised a trade in the United Kingdom, and, as the agents did not occupy, in relation to the appellants, the position of brokers or general commission agents but were really working on the appellants' staff, the appellants were assessable in the name of their agents.

(K.B.; (1926) 42 T.L.R., 389.)

Dauncey v. Howlett.

Additional Remuneration of Director.

A director of a private company was entitled to receive £3,000 per annum free of income tax. The company also resolved that the director be paid by way of additional remuneration such a sum as after the provision of income tax would entitle him to receive the further sum of £25,000 free of tax. The services referred to in the resolution were ordinary services as director of the company.

Rowlatt (J.) held that the additional remuneration was not a perquisite, but was merely an increase in the remuneration of the appellant for the year, and was assessable under Rules 1 and 4 of Schedule E, Income Tax Act, 1918.

(K.B.; (1926) L.T.N., 235.)

Hall v. Commissioners of Inland Revenue.

Loans by Company to Director.

A private company was authorised to make loans to the two directors who between them held most of its shares. The loans amounted to £283,962, of which £150,960 was owing by the appellant. They were debited with interest annually on the loans, which interest was included in the profits of the company. They desired to be relieved from their liability on the loans without repaying them to the company, and by resolution of the company it was resolved that the value of the property and goodwill of the company should be increased by £226,238, and that £57,724 should be transferred from profit and loss account, and that these sums, together with £283,962, should be transferred to a general reserve fund, and that the loans owing by the appellants should be written off against the general reserve fund. The loans, therefore, no longer appeared in the balance-sheet of the company. The appellant was assessed to super tax in respect of the total amount of the loans to him so written off, on the ground that the resolution effected in substance a distribution of its profits by the company.

Rowlatt (J.) held that the transaction was not equivalent to a distribution of profits, and allowed an appeal from the Special Commissioners.

(K.B.; (1926) L.T.N., 236.)

Roberts v. Hanks.

Gift of Stock to Infant.

A gift of stock to an infant as he attains the age of 21 years is an absolute gift, and the donee is not on attaining that age entitled under the Income Tax Act, 1918, sect. 25, to repayment of the tax paid in respect of the income therefrom.

(K.B.; (1926) L.J.N., 222.)

Inland Revenue v. D'Ewes Coke.

Liability to Pay Super Tax on Profits from Shares.

Where a company increases its capital by the issue of new shares, or, at the option of the shareholders, pays cash instead of shares, both of which are paid as a bonus out of accumulated profits in the reserve fund, such shares or cash are income and not capital in the hands of the shareholders who are, therefore, assessable to tax thereon.

(K.B.; (1926) 70 S.J., 445.)

Nielsen, Andersen & Co. v. Collins; Tarn v. Scanlon.

Trade Exercised in England by Non-Resident.

The Court affirmed two decisions of the Special Commissioners of Income Tax that the appellants, who acted in this country as agents of a foreign shipping company, were assessable to income tax on that company's profits.

(K.B.; (1926) 42 T.L.R., 420.)

Maclaine v. Eccott.

Firm Resident Abroad.

Where a firm non-resident in the United Kingdom carries out transactions with other non-residents, there is no liability to income tax in this country.

(H.L.; (1926) 61 L.J.N., 363.)